Missouri Attorney General's Opinions - 1991

Opinion	Date	Topic	Summary
19-91	Mar 1		Opinion letter to The Honorable Sandra D. Kauffman and The Honorable Vernon E. Scoville, III
23-91	Aug 5		Opinion letter to The Honorable Steve Ehlmann
25-91	Apr 8	MENTAL HEALTH, DEPARTMENT OF. NURSES.	Properly trained technicians, nurses' aides or their equivalent may administer non-injectable medications and insulin at community residential facilities which are licensed long-term care facilities; however, the Department of Mental Health may not adopt rules allowing 1) individuals other than nurses to administer injectable medications at community residential facilities which are licensed long-term care facilities, 2) individuals other than nurses to administer medications, either injectable or non-injectable, at community residential facilities which are not licensed long-term care facilities, or 3) individuals other than nurses to insert gastrostomy tubes, naso-gastric tubes or Foley catheters at community residential facilities, regardless of whether or not the facility is a licensed long-term care facility.
31-91	May 30		Opinion letter to The Honorable Tom McCarthy
32-91	May 15		Opinion letter to Stanley M. Thompson
35-91	Jan 28	CAPITOL BUILDING GROUNDS. COMMISSIONER OF ADMINSTRATION. OFFICE OF ADMINISTRATION. STATE BUILDINGS.	"Buildings at the seat of government and on the grounds thereof" in Section 8.035, RSMo 1986, refers to public property of the state located in the City of Jefferson.
36-91	Nov 26	COLLECTION OF TAXES. DEPARTMENT OF REVENUE. LOTTERY COMMISSION. OFFICE OF ADMINISTRATION.	The Director of the Department of Revenue is authorized to disclose confidential tax information to the following parties for the following purposes: 1) the State Lottery Commission in order to offset existing tax liabilities against lottery prizes in accordance with Section 313.321.6, RSMo Supp.1990; 2) the Office of Administration in order to offset pursuant to Section 140.855, RSMo 1986, existing tax liabilities against sums the state owes to vendors who have entered into contracts with the state; 3) private attorneys and/or professional collection agencies in order to collect pursuant to Section 140.850,

			RSMo 1986, taxes owed to the Director of Revenue; and 4) the "quick print" facility operated by the Office of Administration to the extent necessary for copying records.
38-91	July 10		Opinion letter to Donna M. White
41-91	Sept 18	MARRIAGE LICENSE FEES. MARRIAGE LICENSE. MARRIAGES. RECORDER OF DEEDS. RECORDING.	A county recorder of deeds should charge the four dollar ($4.00) user fee provided in Section 59.319, RSMo Supp.1990, on the recording of a marriage license.
43-91	Apr 12	DEPARTMENT OF PUBLIC SAFETY. WATER PATROL. WATERCRAFT.	A sailboard is not a “vessel” or “watercraft” as defined in Section 306.010, RSMo Supp.1990, and Section 306.100, RSMo Supp.1990, does not require a personal flotation device when using a sailboard.
44-91	July 5		Opinion letter to Joe Moseley
46-91	Feb 8	BALLOTS. CITIES, TOWNS AND VILLAGES. CITY ELECTIONS. CITY MARSHAL. ELECTIONS. TERM OF OFFICE. THIRD CLASS CITIES.	The person elected city marshal on April 3, 1990, in a third class city subject to Section 77.370, RSMo Supp.1990, serves a four year term as provided in Section 77.370 despite a city ordinance stating the term shall be two years and despite a phrase on the ballot indicating the term would be two years.
51-91	Feb 26	CONSUMER CREDIT. CREDIT. CREDIT SALES. RETAIL CREDIT SALES ACT. RETAIL SALES. TRUTH IN LENDING.	It is not a violation of the Missouri Retail Credit Sales Law, Sections 408.250 to 408.370, RSMo, or a violation of the Federal Truth in Lending Act for (1) a retail establishment to offer a discount in the purchase price for payment by cash versus credit, and (2) a retail establishment to not honor a discount for cash if the customer chooses to use credit.
53-91	Aug 5		Opinion letter to The Honorable Roger B. Wilson
55-91	May 16		Opinion letter to Richard G. Callahan
57-91	July 24	AMBULANCES. AMBULANCE DISTRICTS. COUNTIES. EMERGENCIES. EMERGENCY VEHICLES.	Under Sections 321.243 and 321.245, RSMo Supp.1990, it is legally permissible for a central dispatching center to provide for the dispatching of ambulances, whether such ambulances are operated by a fire protection district or an ambulance district, and for the dispatching for law enforcement departments.

		FIRE PROTECTION DISTRICTS. POLICE.	
58-91	Apr 30	CITIES, TOWNS AND VILLAGES. CITY PROPERTY. LIQUOR.	The City of St. Peters is not required under Chapter 311, RSMo, to obtain a liquor license for its public meeting rooms which are available for events where alcoholic beverages may be served by individuals or groups other than the city at no charge to the consumer or where alcoholic beverages may be sold as part of a fundraising activity held by individuals or groups other than the city.
59-91	May 28	CITIES, TOWNS AND VILLAGES. LIQUOR. VILLAGES.	The term “incorporated city” as used in Section 311.090, RSMo Supp.1990, includes incorporated villages.
61-91	Apr 17		Opinion letter to Richard G. Callahan
64-91			Withdrawn
65-91	July 11		Opinion letter to The Honorable Margaret Kelly, CPA
66-91	Jan 2	CITIES, TOWNS AND VILLAGES. CITY ANNEXATION. WATER SUPPLY - WATER SUPPLY DISTRICTS.	Section 247.170, RSMo 1986, does not provide a method whereby a county public water supply district may, upon annexation by a city owning a water supply system, require the detachment of the area annexed by the city and the assumption by the city of a proportionate part of the district's debt, without the consent and agreement of the city.
70-91	Feb 21	CITIES, TOWNS AND VILLAGES. STATE PROPERTY. ZONING.	State agencies are not required to comply with conditional use permit regulations or zoning regulations of a fourth class city in using state-owned property within the city or constructing public facilities on such property.
77-91	Mar 29	ELECTIONS. INITIATIVES. INITIATIVE AND REFERENDUM. SECRETARY OF STATE.	(1) As required by Section 116.120, RSMo Supp.1990, and *Missourians to Protect the Initiative Process v. Blunt*, 799 S.W.2d 824 (Mo. banc 1990), the Secretary of State shall determine whether an initiative petition has more than one subject in violation of Article III, Section 50 of the Missouri Constitution at the time of review after signatures have been collected, (2) in determining whether an initiative petition has multiple subjects, the Secretary of State shall be guided by the Court's discussion in *Missourians to Protect the Initiative Process v. Blunt*, supra, and (3) the Secretary of State is not required by Section 116.120, RSMo Supp.1990, or by *Missourians to Protect the Initiative Process v. Blunt*, supra, to seek a legal opinion from the Attorney General in determining whether an initiative petition has more than one subject matter.

80-91	Mar 1	CRIMES. CRIMINAL INVESTIGATIONS. CRIMINAL PROCEDURE. DEPARTMENT OF PUBLIC SAFETY.	The installation and use of pen registers pursuant to Section 542.408.7, RSMo Supp. 1990, is not limited to investigations involving controlled substances.
85-91	Feb 21	BALLOTS. COUNTIES. COUNTY ELECTIONS. ELECTION BALLOTS. LANDFILLS. INITIATIVE PETITION. INITIATIVE. INITIATIVE AND REFERENDUM.	Mercer County is not authorized to conduct a nonbinding referendum on whether the voters favor a hazardous waste ash landfill and/or incinerator locating in Mercer County.
88-91	Aug 30	COMPENSATION. COUNTIES. PUBLIC ADMINISTRATOR.	A county public administrator who began a four year term of office on January 1, 1989, who receives fees of more than $15,000 but less than $25,000, and who completes the required training is entitled to $2,000 of the $4,000 additional compensation provided in Section 473.739, RSMo Supp. 1990.
91-91	Oct 18	ASSESSMENTS. CITIES, TOWNS AND VILLAGES. SPECIAL ASSESSMENTS. VILLAGES.	A county collector is not authorized under Section 80.480, RSMo 1986, to collect current special assessments levied by a village but is authorized under Sections 140.670 and 140.680, RSMo 1986, to collect such delinquent special assessments.
93-91	Dec 10	CHAUFFEUR LICENSE. DEPARTMENT OF REVENUE. DRIVERS LICENSE. EMERGENCY VEHICLES.	Pursuant to Section 302.775(3), RSMo Supp. 1990, individuals driving emergency vehicles or fire equipment necessary to the preservation of life or property or the execution of emergency governmental functions are exempt from obtaining commercial driver's licenses while driving such vehicles both to and from emergency situations.
101-91	Aug 26	COMPENSATION. COUNTIES. PUBLIC ADMINISTRATOR.	Those county public administrators who were eligible to receive $4,000 in additional compensation pursuant to Section 473.739 prior to the amendment of such section by Senate Bill No. 580, 85th General Assembly, Second Regular Session (1990) continue to be eligible to receive the $4,000 in additional compensation after such amendment.
102-91	Apr 8		Opinion letter to The Honorable Jerry E. McBride

103-91	Apr 12		Opinion letter to Bradford E. Ellsworth
110-91	Apr 1	CANDIDATES. ELECTIONS. ELECTION OF SCHOOL CANDIDATES. SCHOOLS. SCHOOL BOARDS. SCHOOL ELECTIONS. WRITE-INS.	(1) If there are two positions to be filled at an election pursuant to Section 162.291, RSMo 1986, for members of the board of a six-director school district and only one candidate has filed, a write-in candidate is not required to file a declaration of intent as provided in Section 115.453(4), RSMo 1986, for his votes to be counted; and (2) in the circumstances described above, two undeclared write-in candidates can defeat the one candidate listed on the ballot if they receive the greater number of votes.
113-91	Nov 21	ANNEXATION. MILITARY INSTALLATIONS. SCHOOLS. SCHOOL AID. SCHOOL ANNEXATION.	Pursuant to Section 162.071, RSMo 1986, a school district may annex "unorganized territory" consisting of a Federal military installation and such annexation does not render a school district ineligible for state aid under Section 163.021, RSMo Supp. 1990.
117-91	May 16	ASSESSORS. COUNTY RECORDS. PROPERTY ASSESSMENT. RECORDS. SUNSHINE LAW.	Property record cards prepared and retained by a county assessor are public records as defined by Section 610.010(4), RSMo Supp. 1990, to be made available for inspection and copying as provided in Section 610.023, RSMo Supp. 1990.
120-91	Nov 21	DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION. HIGHER EDUCATION, DEPARTMENT OF. STATE EMPLOYEES.	Employees of the Department of Elementary and Secondary Education and employees of the Department of Higher Education are included within the operation of Section 36.031, RSMo Supp. 1990, and are subject to the uniform classification and pay provisions in Sections 36.100, 36.110, 36.120 and 36.130, RSMo 1986, and the regulations adopted thereunder, except for 1) employees holding those positions specified in subsection 1 of Section 36.030, RSMo Supp. 1990; however, attorneys regularly employed or appointed are not excepted pursuant to this exception, and 2) professional staff of the Department of Elementary and Secondary Education appointed by the State Board of Education pursuant to Article IX, Section 2(b) of the Missouri Constitution.
121-91	Dec 10	ASSESSORS. COUNTIES. COUNTY BUDGET.	A county commission of a third class county is not authorized under Section 137.720, RSMo Supp. 1990, or The County Budget Law, Sections 50.525 to 50.745, RSMo 1986, to designate a portion of the funds included in the budget for the assessment fund as “contingent funds,” contingent upon the assessor, six months into the fiscal year,

			justifying to the county commission his need for those funds.
125-11	Sept 10	HANCOCK AMENDMENT. POLITICAL SUBDIVISIONS.	The revenue-raising authority of subdivision trustees is not limited by Article X, Section 22 of the Missouri Constitution.
129-91	Aug 5	BALLOTS. COUNTIES. COUNTY ELECTIONS. COUNTY JAIL. ELECTION BALLOTS. ELECTIONS. JAILS.	1) A county commission is not authorized to conduct an advisory election on the question of whether the county jail should be expanded and public funds expended for the construction of an addition to the county jail, and 2) if such an election has been held, its result is not binding on the county commission.
136-91	Dec 30		Opinion letter to Michael W. Bradley
144-91	Dec 30		Opinion letter to Bob Oberlazek
145-91	Oct 18	COUNTIES. COUNTY COMMISSIONERS. INCOMPATIBILITY OF OFFICES. LEVEE DISTRICT SUPERVISOR. LEVEE DISTRICTS.	The offices of supervisor of a levee district organized by the circuit court and county commissioner in the county where the levee district is located are not incompatible and one person may hold both offices at the same time.
148-91	June 19		Opinion letter to The Honorable Roy D. Blunt
149-91	June 19		Opinion letter to The Honorable Roy D. Blunt
150-91	June 24		Opinion letter to The Honorable Roy D. Blunt
151-91	June 21		Opinion letter to The Honorable Roy D. Blunt
153-91	Oct 18	ARCHITECTS AND ENGINEERS. ENGINEERS. PURCHASES. PURCHASES WITHOUT BIDS.	The proposed price or cost of services is not to be considered in determining pursuant to Section 8.289, RSMo 1986, which architectural or engineering firms are the most highly qualified, but proposed price or cost is considered at the time of negotiation of the contract pursuant to Section 8.291, RSMo 1986.
154-91	June 28		Opinion letter to The Honorable Roy D. Blunt

155-91	June 28		Opinion letter to The Honorable Roy D. Blunt
160-91	July 10		Opinion letter to The Honorable Roy D. Blunt
164-91	July 18		Opinion letter to The Honorable Roy D. Blunt
165-91	July 24		Opinion letter to The Honorable Roy D. Blunt
166-91	July 24		Opinion letter to The Honorable Roy D. Blunt
168-91	Aug 5		Opinion letter to The Honorable Roy D. Blunt
170-91	Aug 2		Opinion letter to The Honorable Roy D. Blunt
171-91	Nov 21	COUNTIES. COUNTY FUNDS. DOMESTIC VIOLENCE.	(1) Interest earned on the monies in the special fund required by Section 455.205.3, RSMo 1986, remains with the fund; (2) counties may not use monies in the special fund required by Section 455.205.3, RSMo 1986, for purposes other than domestic violence shelters and may not borrow from the fund for other purposes; and (3) the provision in Section 455.215.3, RSMo 1986, identifying January 1 and July 1 as the dates for a designated authority to make payments to a shelter is directory, not mandatory.
172-91	Oct 11	CITIES, TOWNS AND VILLAGES. VACANCY. VACANCY IN OFFICE. VILLAGES.	1) Pursuant to Section 80.230, RSMo 1986, the chairman of the board of trustees of a village has no vote in filling a vacancy on the board except in case of a tie, 2) a vacancy on the board of trustees can be filled by a two-to-one vote of the remaining members, excluding the chairman, 3) pursuant to Section 80.070, RSMo 1986, a quorum of a five-member board of trustees of a village is three (3) members, and 4) pursuant to Section 80.110, RSMo 1986, three (3) members must vote to pass an ordinance regardless of any vacancy.
174-91	Aug 30	COUNTIES. COUNTY PLANNING AND ZONING. COUNTY ZONING. PLANNING AND ZONING. ZONING.	A third class county wherein the voters approved planning and zoning on August 6, 1968 pursuant to Section 64.530, RSMo, is authorized to proceed with planning and zoning without another vote of the people absent a showing of a radical change in conditions.
177-91	Dec 10	CHAUFFEUR LICENSE. DEPARTMENT OF REVENUE. DRIVERS LICENSE.	Employees of a utility company who occasionally drive one-ton crew cab trucks and 24,000 lb. stake bed trucks in which tools, equipment and employees are transported and who, at other times in the course of their employment, drive passenger cars or pickup trucks, may do so with only a Class F license pursuant to Sections 302.700 to 302.780, RSMo, and 12 CSR 10-24.200.

178-91	Aug 19	COMPENSATION. FIRE PROTECTION DISTRICTS. HEALTH INSURANCE. INSURANCE.	Section 321.190, RSMo Supp. 1990, does not limit the amount of money which a fire protection district, established and conducting business under Chapter 321, RSMo, can expend for health insurance benefits provided to directors of the fire protection district pursuant to Section 67.150, RSMo Supp. 1990.
179-91	Oct 11	DEBT. LEASE PURCHASE AGREEMENTS. LEASES. NURSING HOME DISTRICTS. NURSING HOMES.	1) A nursing home district is authorized under Section 198.300, RSMo, as amended by House Bill No. 450, 86th General Assembly, First Regular Session (1991), to lease a nursing home facility within the district from a private entity and to operate such facility, and 2) where the lease provides for a term of one year with ten successive options to renew for periods of one year and upon failure to renew at the end of any lease year is terminated, such lease does not violate the debt-limitation provisions of Article VI, Section 26 of the Constitution of Missouri and does not require approval of the voters.
181-91	Sept 23	MAINTENANCE. METROPOLITAN ZOOLOGICAL PARK AND MUSEUM DISTRICT.	In regard to an indoor swimming complex, the term "maintenance" as used in Section 184.352(9), RSMo Supp. 1990, includes janitorial personnel, security personnel used to safeguard the facility and equipment, swimming pool chemicals and repair equipment, electricity to run motors and pumps, and utility costs to dehumidify and heat the indoor swimming complex.
190-91	Oct 9	ARCHITECTS AND ENGINEERS. BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS AND LAND SURVEYORS. CITIES, TOWNS AND VILLAGES. ENGINEERS. PUBLIC WORKS.	A city Director of Public Works must be a licensed engineer if he engages in any of the activities listed in Section 327.181, RSMo 1986, which defines practice as a professional engineer, but state statutes do not require him to be a licensed engineer if he does not engage in any such activities.
192-11	Sept 26		Opinion letter to The Honorable Roy D. Blunt
194-91	Nov 26	AMBULANCE DISTRICTS. FIRE PROTECTION DISTRICTS. QUALIFICATION FOR OFFICE.	Section 321.017, RSMo, as enacted by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 262, 86th General Assembly, First Regular Session (1991), does not apply during the current terms of fire protection district and ambulance district board members in office on August 28, 1991.
195-91	Oct 28	NATURAL RESOURCES, DEPARTMENT OF.	The Department of Natural Resources is not authorized to spend monies generated by the Parks and Soils Sales Tax, Article IV, Section 47(a), of the Constitution of Missouri, or monies in the State Park

		STATE PARKS. TAXATION-SALES TAX.	Earnings Fund, Section 253.090, RSMo 1986, to make payments to counties and other political subdivisions in lieu of taxes on real property acquired by the Department.
198-91	Oct 9		Opinion letter to The Honorable Roy D. Blunt
211-91	Dec 10		Withdrawn
217-91	Dec 30	CONSIDERATION. GAMBLING. LOTTERIES.	A promotional plan where a manufacturer of merchandise conducts a drawing of product registration cards for a prize when such cards may only be obtained by the purchase of merchandise is a lottery as the term is used in Article III, Section 39(9) of the Missouri Constitution and Section 572.010(7), RSMo 1986.
220-91	Dec 31	ANNEXATION. ANNEXATION ELECTIONS. ANNEXATION SCHOOL DISTRICT ELECTION. ELECTIONS. PROPERTY TAX. SCHOOLS. SCHOOL DISTRICT ANNEXATION. SCHOOL ELECTIONS.	A six-director school district can submit to its voters at the same election the question of annexation as provided in Section 162.441, RSMo 1986, and the question of a tax rate increase pursuant to Sections 164.021 and 164.031, RSMo 1986.

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March 1, 1991

OPINION LETTER NO. 19-91

The Honorable Sandra D. Kauffman
Representative, District 46
State Capitol Building, Room 105-H
Jefferson City, Missouri 65101

and

The Honorable Vernon E. Scoville, III
Representative, District 45
State Capitol Building, Room 403-A
Jefferson City, Missouri 65101

Dear Representative Kauffman and Representative Scoville:

You have each requested an opinion of this office concerning Section 353.030(11), RSMo 1986. From the information you provided, it appears your questions can be summarized as follows:

> 1. Does Section 353.030(11), RSMo 1986, include as "gross earnings" the proceeds from the sale of realty and improvements, or refinancing thereof, of all or part of the redevelopment project?
>
> 2. Does Section 353.030(11)(c), RSMo 1986, include debt service in the provision for deducting from gross income "[a]n annual amount sufficient to amortize the cost of the entire project"?

Section 353.030(11), RSMo 1986, provides as follows:

> 353.030. Organization of corporation--contents of articles of agreement.--Corporations referred to in this chapter as urban redevelopment corporations may be organized in the following manner: The articles of

agreement or association shall be prepared, subscribed and acknowledged, and filed in the office of the secretary of state pursuant to the general corporations laws of the state and shall contain:

* * *

(11) A declaration that the corporation has been organized to serve a public purpose; that all real estate acquired by it and all structures erected by it are to be acquired for the purpose of promoting the public health, safety and welfare, and that the stockholders of the corporation shall when they subscribe to and receive the stock thereof, agree that the net earnings of the corporation shall be limited to an amount not to exceed eight percent per annum of the cost to such corporation of the redevelopment project including the cost of the land, or the balances of such cost as reduced by amortization payments; provided, that the net earnings derived from any redevelopment project shall in no event exceed a sum equal to eight percent per annum upon the entire cost thereof. Such net earnings shall be computed after deducting from gross earnings the following:

(a) All costs and expenses of maintenance and operation;

(b) Amounts paid for taxes, assessments, insurance premiums and other similar charges;

(c) An annual amount sufficient to amortize the cost of the entire project at the end of the period, which shall not be more than sixty years from the date of completion of the project. The development plan may contain provisions satisfactory to the legislative authority authorizing such plan that any surplus earnings in excess of the rate of net

> earnings provided in this chapter may be held by the corporation as a reserve for maintenance of such rate of return in the future and may be used by the corporation to offset any deficiency in such rate of return which may have occurred in prior years; or may be used to accelerate the amortization payments; or for the enlargement of the project; or for reduction in rentals therein; provided, that any excess of such surplus earnings remaining at the termination of the tax relief granted pursuant to section 353.110 shall be turned over by the corporation to the city. [Emphasis added.]

* * *

Section 353.030, RSMo 1986, does not define "gross earnings" nor is such term defined elsewhere in Chapter 353, RSMo. Therefore, in interpreting the legislature's intent in using this statutory language, we must look to the well-established rule of statutory construction that words appearing in a statute must be given their "plain and ordinary meaning." State ex rel. Dravo Corporation v. Spradling, 515 S.W.2d 512, 517 (Mo. 1974).

Black's Law Dictionary, Sixth Edition, defines "gross earnings" as: "[t]otal income and receipts of a person or business before deductions and expenses." See also Rambin v. Continental Casualty Company, 186 So.2d 861, 864 (La. 1966). Receipt is defined as: "that which comes in, in distinction from what is expended, paid out, sent away, and the like." State v. Texas Co., 116 S.W.2d 583, 584 (Tenn. 1938). In Black's Law Dictionary's definition of gross earnings, reference is made to the synonymous definition of gross income. Black's Law Dictionary cites I.R.C. Section 61(a), defining gross income as all income from whatever source derived, including (but not limited to) the following items: (1) compensation for services, including fees, commissions, and similar items; (2) gross income derived from business; (3) gains derived from dealings in property; etc. The recognition of "gains derived from dealings in property" as "gross earnings" would include gains from the sale of realty and improvements. Therefore, we conclude that "gross earnings" as used in Section 353.030(11) includes gains from the sale of realty and improvements.

However, the proceeds of a refinancing are not included as "gross earnings." Black's Law Dictionary defines refinancing as: "[t]o finance again or anew; to pay off existing debts with funds secured from new debt; to extend the maturity date and/or increase the amount of an existing debt; to arrange for a new payment schedule. . . ."

> Whatever may be the strict or technical meaning of "income," for tax purposes the term means an actual gain, or actual increase of wealth, and does not include a mere unrealized increase in value.

85 C.J.S. Taxation § 1096a. We conclude that the proceeds of refinancing of a redevelopment project does not constitute "gross earnings" as used in Section 353.030(11).

Your final question is whether "[a]n annual amount sufficient to amortize the cost of the entire project" includes debt service. Black's Law Dictionary defines amortization as: " . . . [a] reduction in a debt or fund by periodic payments covering interest and part of principal, ..." See also, Addressograph - Multigraph Corporation v. United States, 78 F. Supp. 111, 122, n. 1 (Court of Claims 1948); Applestein v. Royal Realty Corporation, 28 A.2d 830, 831-832 (Md. App. 1942). Debt service is defined in Black's Law Dictionary as the interest and charges currently payable on a debt, including principal payments. Therefore, we conclude an annual amount sufficient to "amortize the cost of the entire project" as used in Section 353.030(11)(c) includes debt service.

Very truly yours,

William L. Webster

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August 5, 1991

OPINION LETTER NO. 23-91

The Honorable Steve Ehlmann
Representative, District 19
State Capitol Building, Room 201E
Jefferson City, Missouri 65101

Dear Representative Ehlmann:

This opinion letter is in response to your question asking:

> Is there any constitutional or statutory authority authorizing first-class, non-charter counties to enact a supplemental budget?

Article VI, Section 24, Missouri Constitution provides:

> Section 24. Annual budgets and reports of local government and municipally owned utilities - audits. As prescribed by law all counties . . . shall have an annual budget. . . .

The County Budget Law is found in Sections 50.525 through 50.745, RSMo 1986. Section 50.540.1, RSMo 1986, requires "each department, office, institution, commission, or court of the county" in first-class counties to submit to the county budget office by September 1 of each year estimates of its expenditures and estimated revenues for the next budget year. Section 50.540.4, RSMo 1986, requires the budget officer of a first-class county to transmit the budget document to the county commission by November 15. Section 50.550, RSMo 1986, requires: "The annual budget shall present a complete financial plan for the ensuing budget year." Section 50.610, RSMo 1986, allows the county commission to revise the budget; however, the final budget shall be adopted and an appropriation order made

"at least ten days after the beginning of the fiscal year" with certain exceptions not applicable to your question.

Based upon a review of these provisions, there is no express constitutional or statutory authority for the preparation of a supplemental budget by a first-class, non-charter county. Section 50.610, RSMo 1986, provides: "Any cash surplus at the end of any fiscal year shall be carried forward and merged with the revenues of the succeeding year. Payment of any legal unpaid obligations of any prior year, however, shall be a first charge in the budget against the revenues of the budget year."

As we observed in Attorney General Opinion No. 4, Baker, August 8, 1957, a copy of which is enclosed, the legislative intent behind the County Budget Law is to require county business to operate on a cash basis for the fiscal year January 1 to December 31.

Once the final budget is adopted, a statutory provision for transferring funds is found in Section 50.630, RSMo 1986:

> 50.630. County commissions shall have power to authorize the transfer of any unencumbered appropriation balance.--The county commission may authorize the transfer within the same fund of any unencumbered appropriation balance or any portion thereof from one spending agency under its jurisdiction to another; but this action shall be taken only on the recommendation of the budget officer and only during the last two months of the fiscal year, except that transfers from the emergency fund may be made at any time in the manner herein provided.

In State ex rel. Strong v. Cribb, 364 Mo. 1122, 273 S.W.2d 246 (1954), while maintaining that the County Budget Law should be strictly enforced, the court observed "[i]t is common knowledge that unforeseen events often occur which require expenditures in excess of the amount assigned . . . ." Id., at 250. The court concluded that certain moneys could be used for unforeseen expenses in a particular fund. Following this decision, this office has issued several opinions relating to unforeseen expenses and unanticipated revenues. See, e.g. Attorney General Opinion No. 4, Baker, August 8, 1957; Attorney General Opinion Letter No. 74, Reinhard, July 26, 1961; Attorney General Opinion Letter No. 376, Winchell, 1963; Attorney General

Opinion Letter No. 221, Eiser, 1963; Attorney General Opinion Letter No. 181, Ashcroft, 1974; copies of which are enclosed.

In Attorney General Opinion No. 302, Kiser, 1964, a copy of which is enclosed, the question presented involved whether revenues exceeding the anticipated and budgeted amount could be used in the current budget year. There, we concluded that because the County Budget Law does not provide for amending or altering the budget once it is established, the obvious legislative intent is that it should not be amended. Therefore, funds received from a special tax levy in excess of the amount budgeted could not be used to change or amend the budgeted amount for the fund.

In direct answer to your question, there is no constitutional or statutory provision authorizing a first-class, non-charter county to enact a supplemental budget. However, in the event of special unforeseen circumstances as discussed in the prior opinions enclosed, it may be possible to amend the budget in response to the special unforeseen circumstance.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 4, Baker, August 8, 1957
Opinion Letter No. 74, Reinhard, July 26, 1961
Opinion Letter No. 376, Winchell, 1963
Opinion Letter No. 221, Eiser, 1963
Opinion Letter No. 181, Ashcroft, 1974
Opinion No. 302, Kiser, 1964

MENTAL HEALTH, DEPARTMENT OF:
NURSES: Properly trained technicians, nurses' aides or their equivalent may administer non-injectable medications and insulin at community residential facilities which are licensed long-term care facilities; however, the Department of Mental Health may not adopt rules allowing 1) individuals other than nurses to administer injectable medications at community residential facilities which are licensed long-term care facilities, 2) individuals other than nurses to administer medications, either injectable or non-injectable, at community residential facilities which are not licensed long-term care facilities, or 3) individuals other than nurses to insert gastrostomy tubes, naso-gastric tubes or Foley catheters at community residential facilities, regardless of whether or not the facility is a licensed long-term care facility.

April 8, 1991

OPINION NO. 25-91

Keith Schafer, Director
Department of Mental Health
1915 Southridge Drive
Jefferson City, Missouri 65109

Dear Director Schafer:

This opinion is in response to your question asking:

> May the Department of Mental Health licensure rules for the community residential facilities allow other than LPNs or RNs to perform the following procedures:
>
> 1. Administer medications;
>
> 2. Insert gastrostomy tubes;
>
> 3. Insert naso-gastric tubes;
>
> 4. Insert foley catheters;
>
> 5. Administer tube feedings;

6. Other procedures specifically addressed in the Nurse Practice Act.

We begin by assuming that the non-nurses are not otherwise licensed, except possibly a license limited to a specific type of facility, to provide the care which you describe.

Sections 335.011 to 335.096, RSMo, are commonly referred to as The Nursing Practice Act. Section 335.016 (7) and (8), RSMo 1986, provides:

> 335.016. Definitions.--As used in sections 335.011 to 335.096, unless the context clearly requires otherwise, the following words and terms shall have the meanings indicated:
>
> * * *
>
> (7) "Practical nursing" is the performance for compensation of selected acts for the promotion of health and in the care of persons who are ill, injured, or experiencing alterations in normal health processes. Such performance requires substantial specialized skill, judgment and knowledge. All such nursing care shall be given under the direction of a person licensed in this state to prescribe medications and treatments or under the direction of a registered professional nurse;
>
> (8) "Professional nursing" is the performance for compensation of any act which requires substantial specialized education, judgment and skill based on knowledge and application of principles derived from the biological, physical, social and nursing sciences, including, but not limited to:
>
> (a) Responsibility for the teaching of health care and the prevention of illness to the patient and his family; or
>
> (b) Assessment, nursing diagnosis, nursing care, and counsel of persons who

> are ill, injured or experiencing alterations in normal health processes; or
>
> (c) The administration of medications and treatments as prescribed by a person licensed in this state to prescribe such medications and treatments; or
>
> (d) The coordination and assistance in the delivery of a plan of health care with all members of the health team; or
>
> (e) The teaching and supervision of other persons in the performance of any of the foregoing;
>
> * * *

Section 335.076.3, RSMo 1986, provides:

> 3. No person shall practice or offer to practice professional nursing or practical nursing in this state for compensation or use any title, sign, abbreviation, card, or device to indicate that such person is a practicing professional nurse or practical nurse unless he has been duly licensed under the provisions of sections 335.011 to 335.096.

Based on Section 335.076.3, non-nurses are prohibited from performing any procedures specifically addressed in The Nursing Practice Act unless they are exempt under Section 335.081, RSMo 1986. Subsection 2 of Section 335.081 provides:

> 335.081. Exempted practices and practitioners.--So long as the person involved does not represent or hold himself out as a nurse licensed to practice in this state, no provision of sections 335.011 to 335.096 shall be construed as prohibiting:
>
> * * *
>
> (2) The services rendered by technicians, nurses' aides or their equivalent trained and employed in public or private hospitals and licensed long-term care facilities except the services rendered in licensed

> long-term care facilities shall be limited to administering medication, excluding injectables other than insulin;
>
> * * *

Long-term care facilities are any residential care facility I, residential care facility II, intermediate care facility or skilled nursing facility. Section 344.010(2), RSMo Supp. 1990. We understand that some of the the community residential facilities referenced in your question are long-term care facilities. In those facilities, pursuant to Section 335.081(2), technicians, nurses' aides and their equivalent who are properly trained can administer non-injectable medications and insulin to the residents. "Properly trained," as used in this section, is a phrase which is explained through the Division of Aging statutes and regulations.

Section 335.081(2) only allows at long-term care facilities the administration of non-injectable medications and insulin by technicians, nurses' aides or their equivalent. That section does not permit individuals not licensed as nurses to insert gastrostomy tubes, naso-gastric tubes and Foley catheters at long-term care facilities. Administering tube feedings is not the same as the administration of medication but we must first address the issue of whether administering a tube feeding is the practice of nursing before we determine whether non-nurses at long-term care facilities can perform this procedure.

If the community residential facilities are not long-term care facilities, Section 335.081(2) does not apply. Therefore, we must address the question of whether each of the procedures you have listed are within the definition of the practice of nursing. The administration of medications is expressly listed as a part of the practice of nursing in Section 335.016(8)(c), RSMo 1986. The question which must be answered with regard to the insertion of gastrostomy tubes, naso-gastric tubes and Foley catheters is whether the procedure "requires substantial specialized skill, judgment and knowledge" (Section 335.016(7)) or "substantial specialized education, judgment and skill based on knowledge and application of principles derived from the biological, physical, social and nursing sciences" (Section 335.016(8)). If the procedure falls into either of these two categories, it is the practice of nursing and may not be performed by non-nurses.

Stedman's Medical Dictionary (Fifth Lawyers' Ed. 1982) defines the relevant terms:

gastrostomy - The establishment of a new opening into the stomach.

naso-gastric tube, a stomach tube passed through the nose.

catheter- A tubular instrument for the passage of fluid from or into a body cavity, especially one designed to be passed through the urethra into the bladder to drain it of retained urine.

Foley catheter, a catheter with a retaining balloon.

We believe that the insertion of a gastrostomy tube, naso-gastric tube or Foley catheter does require such knowledge and skill that these procedures fall within the definition of the practice of nursing. We decline to give an opinion regarding administration of tube feedings. We believe that various factors, including the contents of the feeding, could affect the answer to that question.

Because the definition of the practice of nursing and the prohibition against practicing nursing without a license are found in the statutes, no state agency has the authority to adopt contradictory rules. Parmley v. Missouri Dental Board, 719 S.W.2d 745, 755 (Mo. banc 1986); Missouri Hospital Association v. Missouri Department of Consumer Affairs, Regulation and Licensing, 731 S.W.2d 262, 264 (Mo. App. 1987). Therefore, the Department of Mental Health cannot adopt regulations which would allow non-nurses to perform procedures which constitute the practice of nursing unless those non-nurses are exempted from coverage of The Nursing Practice Act and are in compliance with the requirements of the exemption.

CONCLUSION

It is the opinion of this office that properly trained technicians, nurses' aides or their equivalent may administer non-injectable medications and insulin at community residential facilities which are licensed long-term care facilities; however, the Department of Mental Health may not adopt rules allowing 1) individuals other than nurses to administer injectable medications at community residential facilities which are licensed long-term care facilities, 2) individuals other than nurses to administer medications, either injectable or non-injectable, at community residential facilities which are

not licensed long-term care facilities, or 3) individuals other than nurses to insert gastrostomy tubes, naso-gastric tubes or Foley catheters at community residential facilities, regardless of whether or not the facility is a licensed long-term care facility.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

May 30, 1991

OPINION LETTER NO. 31-91

The Honorable Tom McCarthy
Senator, District 26
State Capitol Building, Room 331
Jefferson City, Missouri 65101

Dear Senator McCarthy:

This opinion letter is in response to your question asking:

> Will the Eureka Fire Protection District annual levy be subject to reassessment values, pursuant to Section 137.073 RSMo, computed upon the assessed valuations contained in a tax increment financing district established by the City of Eureka, Missouri, under Section 99.800, RSMo, et seq., thereby presenting the situation of the roll-back of the fire protection district's levy for revenues it shall not receive?

We understand that your question relates to the Eureka Fire Protection District's concern that its annual property tax rate may be rolled back if there are increases in the assessed valuation of real property in the Eureka Tax Increment Financing District even though the Eureka Fire Protection District will not receive any of the revenue from those assessment increases.

Sections 99.845 and 99.855, RSMo, provide for the method in which real property is assessed and the funds are distributed in a tax increment financing district. Section 99.855, RSMo 1986, provides in pertinent part:

> 99.855. Tax rates for districts containing redevelopment areas, method for establishing county assessor's duties--methods for extending taxes to terminate, when.--1. If a municipality by

> ordinance provides for tax increment allocation financing pursuant to sections 99.845 and 99.850, the county assessor shall immediately thereafter determine the total equalized assessed value of all taxable real property within such redevelopment project area by adding together the most recently ascertained equalized assessed value of each taxable lot, block, tract, or parcel of real property within such project area, and shall certify such amount as the total initial equalized assessed value of the taxable real property within such project area.
>
> 2. After the county assessor has certified the total initial equalized assessed value of the taxable real property in such redevelopment project area, then, in respect to every taxing district containing a redevelopment project area, the county clerk, or any other official required by law to ascertain the amount of the equalized assessed value of all taxable property within such district for the purpose of computing any debt service levies to be extended upon taxable property within such district, shall in every year that tax increment allocation financing is in effect ascertain the amount of value of taxable property in a redevelopment project area by including in such amount the certified total initial equalized assessed value of all taxable real property in such area in lieu of the equalized assessed value of all taxable real property in such area. . . .

Section 99.845, RSMo Supp. 1990, provides in pertinent part:

> 99.845. Tax increment financing adoption--division of ad valorem taxes--payments in lieu of tax, deposit evaluation not to be used in calculating state school aid formula, when--other taxes included, amount.--. . .

> (1) That portion of taxes levied upon each taxable lot, block, tract, or parcel of real property which is attributable to the initial equalized assessed value of each such taxable lot, block, tract, or parcel of real property in the redevelopment project area shall be allocated to and, when collected, shall be paid by the county collector to the respective affected taxing districts in the manner required by law in the absence of the adoption of tax increment allocation financing;
>
> (2) Payments in lieu of taxes attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property in the redevelopment project area over and above the initial equalized assessed value of each such unit of property in the redevelopment project area shall be allocated to and, when collected, shall be paid to the municipal treasurer who shall deposit such payment in lieu of taxes into a special fund called the "Special Allocation Fund" of the municipality for the purpose of paying redevelopment project costs and obligations incurred in the payment thereof. . . .

Payment in lieu of taxes is defined in Section 99.805(7), RSMo 1986, as follows:

> 99.805. Definitions.--As used in sections 99.800 to 99.865, unless the context clearly requires otherwise, the following terms shall mean:
>
> * * *
>
> (7) "Payment in lieu of taxes", those estimated revenues from real property in a redevelopment project area acquired by a municipality, which according to the redevelopment project or plan are to be used for a private use, which taxing districts would have received had a municipality not adopted tax increment

> allocation financing, and which would result from levies made after the time of the adoption of tax increment allocation financing during the time the current equalized value of real property in the project area exceeds the total initial equalized value of real property in such area until the designation is terminated pursuant to subsection 2 of section 99.850;
>
> * * *

These statutes provide that a taxing district's property tax rate will be applied to the initial equalized assessed valuation of all real property in the redevelopment project area every year until the redevelopment project designation is terminated. The difference between the initial equalized assessed valuation and the current equalized assessed valuation in any given year will be the basis for calculating payments in lieu of taxes for that year which will be used to pay for the redevelopment project itself. Increases in the assessed valuation will be the basis for calculating payments in lieu of taxes which will go not to the taxing districts but to the redevelopment project.

Your question arises because of constitutional and statutory provisions which may provide for a rollback in a taxing district's property tax rate when there is an increase in the assessed valuation. See Article X, Section 22 of the Missouri Constitution (which was enacted as part of what is commonly referred to as the Hancock Amendment); Section 137.073, RSMo Supp. 1990; and Section 137.115, RSMo Supp. 1990. Article X, Section 22 of the Missouri Constitution provides in part:

> Section 22. Political subdivisions to receive voter approval for increases in taxes and fees--rollbacks may be required--limitation not applicable to taxes for bonds. (a) . . . If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the

general price level, as could have been collected at the existing authorized levy on the prior assessed value.

* * *

Section 137.073 provides in part:

137.073. Definitions--revision of prior levy, when, procedure.--

* * *

2. Whenever changes in assessed valuation that result from a general reassessment of real property within the county are entered in the assessor's books, the county clerk in all counties and the assessor of St. Louis city shall notify each political subdivision wholly or partially within the county of the change in valuation, and each political subdivision wholly or partially within the county, including municipalities maintaining their own tax books, shall immediately revise the rates of levy for each purpose for which taxes are levied to the extent necessary to produce from all taxable property, including state assessed property, substantially the same amount of tax revenue as was produced in the previous year and, in addition thereto, a percentage of the previous year's revenues equal to the preceding valuation factor of the political subdivision.

3. Whenever the assessed valuation of real or real and personal property combined within a political subdivision or taxing authority has increased by ten percent or more over the prior year's valuation by action other than a general reassessment, the political subdivision or taxing authority shall immediately revise and lower the rates of levy for each purpose for which taxes are levied to the extent necessary to produce from all taxable property, including state assessed property, substantially the same amount of

> tax revenue as set forth in estimates filed by school districts for the current year as required by section 164.011, RSMo, or as estimated in the annual budget for the fiscal year adopted in accordance with chapters 50 and 67, RSMo, by political subdivisions other than school districts. The lower rate of levy as determined by the taxing authority, or when a court has determined the tax rate reduction, shall then be recertified to the county clerk.
>
> * * *

Section 137.115 provides in part:

> 137.115. Real and tangible personal property, assessment--equalization maintenance plan--assessor may mail forms--classes of property assessment percentage--St. Louis city and County valuation of subclass one real property by computer, burden of proof on assessor, evidence.--
>
> * * *
>
> (2) Whenever changes in assessed valuation resulting from implementation of an assessment and equalization maintenance plan within the county are entered in the assessor's books, the county clerk in all counties and the assessor of St. Louis city shall notify each political subdivision wholly or partially within the county or St. Louis city of the change in valuation, exclusive of new construction and improvements. Each political subdivision wholly or partially within the county or St. Louis city, including municipalities maintaining their own tax books, shall immediately revise the rates of levy for each purpose for which taxes are levied to the extent necessary to produce from all taxable property, exclusive of new construction and improvement, substantially the same amount of tax revenue as was produced in the previous year, except that the rate may not exceed the greater of the

> rate in effect in the 1984 tax year; provided . . . . The provisions for setting and revising rates of levy under this section shall prevail in event of conflict with provisions of section 137.073 resulting from implementing an assessment and equalization maintenance plan in each odd-numbered year, and the revised rate determined under this section shall become the tax rate ceiling as defined under section 137.073 and such rate may be increased only in the manner provided by law and the constitution. The value of "new construction and improvements" shall include the additional assessed value of all improvements or additions to real property which were begun after and were not part of the prior year's assessment, except that the additional assessed value of all improvements or additions to real property which had been totally or partially exempt from ad valorem taxes pursuant to sections 99.800 to 99.865, RSMo, sections 135.200 to 135.255, RSMo, and section 353.110, RSMo, shall be included in the value of "new construction and improvements" when they become totally or partially subject to assessment and payment of all ad valorem taxes. . . . [Emphasis added.]
>
> * * *

Section 137.115.1(2) quoted above specifically provides that the additional assessed value of all improvements or additions to real property which had been totally or partially exempt from ad valorem taxes pursuant to Sections 99.800 to 99.865, RSMo (the tax increment financing statutes), are included in the value of "new construction and improvements" when they become totally or partially subject to assessment and payment of all ad valorem taxes. Such provision indicates that the additional assessed valuation is not included as "new construction and improvements" previously. Therefore, in computing the maximum permissible property tax rate for a fire protection district, we conclude the increases in assessed value in a tax increment financing district, which are subject to payments in lieu of taxes and do not provide the basis for additional revenues to the fire protection district, would not be considered in such calculation. Section 137.115 expressly

states that in the event of a conflict between Section 137.073 and Section 137.115, the provisions of Section 137.115 prevail.

This conclusion is consistent with the purposes of the tax rollback provisions. In discussing Article X, Section 22(a) of the Missouri Constitution, the Missouri Supreme Court in Scholle v. Carrollton R-VII School District, 771 S.W.2d 336 (Mo. banc 1989) stated: "The purpose of the levy reduction is to eliminate a revenue windfall to government resulting from reassessment and to assure that the property tax levy will 'yield the same gross revenue [after reassessment] from existing property . . . as could have been collected at the existing authorized levy on the prior assessed value.'" Id., at 338. In Asarco, Incorporated v. McHenry, 679 S.W.2d 863 (Mo. banc 1984), the Missouri Supreme Court, when discussing a prior version of Section 137.073, stated: "Section 137.073, RSMo 1978, was adopted to prevent windfalls to taxing authorities simply because of increases in assessed valuations of locally assessed property." Id., at 864. When the fire protection district does not receive any additional revenue as a result of increases in the assessed valuation of real property in a tax increment financing district, not including such increases when calculating the maximum permissible property tax rate is consistent with the purposes of the tax rollback provisions.

Based on the provision in Section 137.115 discussed above and the purposes of the tax rollback provisions, it is the opinion of this office that increases in assessed valuation in a tax increment financing district, which are subject to payments in lieu of taxes and do not provide the basis for additional revenues to the fire protection district, would not be considered in the calculation of the maximum permissible property tax rate under the property tax rollback provisions.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

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ATTORNEY GENERAL

P. O. Box 899
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May 15, 1991

OPINION LETTER NO. 32-91

Stanley M. Thompson
Ray County Prosecuting Attorney
Post Office Box 535
Richmond, Missouri 64085

Dear Mr. Thompson:

This opinion letter is in response to your questions asking:

Regarding funds generated under the authority of Section 483.310.2, RSMo, from money deposited by the Circuit Clerk:

1. Who controls the expenditure of such funds; the Presiding Circuit Judge under the general superintending authority of the Court, or the Circuit Clerk under the provisions of the statute?

2. May such funds be expended, other than for travel and entertainment, for matters relating to the Circuit Court or are expenditures limited solely to expenses of the Circuit Clerk?

Section 483.310, RSMo Supp. 1990, provides:

> 483.310. Investment of funds in registry in savings deposits--income, how used--clerk defined.--1. Whenever any funds are paid into the registry of any circuit court and the court determines, upon its own finding or after application by one of the parties, that such funds can be reasonably expected to remain on deposit for a period sufficient to provide income through investment, the court may make an order directing the clerk to deposit such

funds as are described in the order in savings deposits in banks, savings and loan associations, or in United States treasury bills. Deposits of such funds in any bank or savings and loan association shall not exceed the limits of the federal deposit insurance on accounts in such institution. All such accounts shall be in the name of the "Clerk of the _____ Court as Trustee in _____ (Style and Cause Number)", the exact name to be prescribed in the court's order. The court may prescribe a bond or other guarantee for the security of the fund. Necessary costs, including reasonable costs for administering the investment, may be paid from the income received from the investment of the trust fund. The net income so derived shall be added to and become a part of the principal.

2. In the absence of such an application by one of the parties within sixty days from the payment of such funds into the registry of the court, the clerk of the court may invest funds placed in the registry of the court in savings deposits in banks or savings and loan associations carrying federal deposit insurance to the extent of the insurance or in United States treasury bills and the income derived therefrom may be used by the clerk for paying the premiums on bonds of employees of the clerk, rent on safety deposit boxes, subscriptions on publications available pursuant to section 477.235, RSMo, books and publications of the Missouri bar and books and other publications and materials published by the state of Missouri, printing of pamphlets or booklets of the rules adopted by the court or clerk and forms used in the court which comply with the statutes of the state of Missouri and the rules of the supreme court, copies of which shall be distributed to litigants and members of the bar practicing in the court, and other expenditures of the circuit clerk's office, and the balance, if any, shall be paid into the general revenue fund

> of the county, except that when provision is made in a county charter for the appointment of a court administrator to perform the duties of a circuit clerk or for the appointment of a circuit clerk by the court, such income may also be used for any expenditures of the court other than expenditures for travel or entertainment. If any application for the investment of such funds is filed by one of the parties after sixty days, an order may be entered providing for investment of funds as provided in subsection 1 of this section, and the clerk shall thereupon reinvest such funds within a reasonable time thereafter in accordance with the order.
>
> 3. As used in this section and section 483.312, the term "clerk" shall mean the circuit clerk with respect to funds in those cases for which the circuit clerk is responsible for collecting fees as provided in subsection 1 of section 483.550 and shall also mean those clerks who are designated by or pursuant to subsections 2 and 3 of section 483.550 to collect fees with respect to funds in those cases for which they are so made responsible for collecting fees. [Emphasis added.]

The Circuit Clerk of Ray County is an elected official as provided in Section 483.015, RSMo 1986.

> 483.015. Election--term of office--commission exceptions, Jackson County court administrator to be clerk, St. Louis County circuit clerk, how selected--1. At the general election in the year 1982, and every four years thereafter, except as herein provided and except as otherwise provided by law, circuit clerks shall be elected by the qualified voters of each county and of the city of St. Louis, who shall be commissioned by the governor, and shall enter upon the discharge of their duties on the first day in January next ensuing their election, and shall hold their offices for the term of four years, and until their

> successors shall be duly elected and qualified, unless sooner removed from office.
>
> 2. The court administrator for Jackson County provided by the charter of Jackson County shall be selected as provided in the county charter and shall exercise all of the powers and duties of the circuit clerk of Jackson County. The director of judicial administration and the circuit clerk of St. Louis County shall be selected as provided in the charter of St. Louis County.
>
> 3. When provision is made in a county charter for the appointment of a court administrator to perform the duties of a circuit clerk or for the appointment of a circuit clerk, such provisions shall prevail over the provisions of this chapter providing for a circuit clerk to be elected. The persons appointed to fill any such appointive positions shall be paid by the counties as provided by the county charter or ordinance; provided, however, that if provision is now or hereafter made by law for the salaries of circuit clerks to be paid by the state, the state shall pay over to the county a sum which is equivalent to the salary that would be payable by law by the state to an elected circuit clerk in such county if such charter provision was not in effect. The sum shall be paid in semimonthly or monthly installments, as designated by the commissioner of administration.

Your first question asks who controls the expenditure of income from investments made pursuant to Section 483.310. Legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). Section 483.310.2 provides that "the income derived therefrom may be used by the clerk" for the enumerated purposes. [Emphasis added.] Based on the plain meaning of this provision, we conclude that the Circuit Clerk controls the expenditure of such income.

Stanley M. Thompson

Your second question asks whether expenditures are limited solely to expenses of the Circuit Clerk. Section 483.310.2 expressly lists the permitted uses of the income derived from funds invested by the Circuit Clerk. "[W]hen statutes . . . enumerate the things or subjects on which they are to operate, they are to be taken as excluding from their effect all subjects and things not expressly mentioned." DePoortere v. Commercial Credit Corporation, 500 S.W.2d 724, 727 (Mo. App. 1973). In Attorney General Opinion No. 174-87 and Opinion No. 145, Rabbitt, 1970, copies of which are enclosed, we concluded the Circuit Clerk did not have authority to invest funds deposited into the registry of the court in a manner not specifically enumerated in Section 483.310, RSMo. Similarly, we conclude that the Circuit Clerk is without authority to spend the income from such investments in a manner not specifically enumerated in Section 483.310. Such income can be used only for the purposes enumerated in Section 483.310.

Your second question also asks whether income can be expended, "other than for travel and entertainment, for matters relating to the Circuit Court." Although Section 483.310 does refer to such expenditures, these are only permitted "when provision is made in a county charter for the appointment of a court administrator to perform the duties of a circuit clerk or for the appointment of a circuit clerk by the court." Since the Ray County Circuit Clerk is an elected official, this exception does not apply.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 174-87
Opinion No. 145, Rabbitt, 1970

CAPITOL BUILDING GROUNDS:
COMMISSIONER OF ADMINISTRATION:
OFFICE OF ADMINISTRATION:
STATE BUILDINGS:

"Buildings at the seat of government and on the grounds thereof" in Section 8.035, RSMo 1986, refers to public property of the state located in the City of Jefferson.

January 28, 1991

OPINION NO. 35-91

James R. Moody
Commissioner of Administration
P.O. Box 809
Jefferson City, Missouri 65102

Dear Commissioner Moody:

This opinion is in response to your question asking:

> Does the "seat of government" and its grounds include all state owned buildings and property within the City of Jefferson, Missouri, for purposes of 8.035 RSMo 1986?
>
> If not, what facilities are included in that term?

On the opinion request form you submitted, you state:

> State owned property and buildings have expanded throughout the city limits of Jefferson. The Office of Administration has been asked by the Missouri Departments of Agriculture, Revenue, and the Highway and Transportation Commission to provide law enforcement services to their agencies at all locations in Jefferson City.
>
> As a response to recent criminal activity which occurred at the State Agency for Surplus Property, the Office of Administration began patrolling the grounds of this agency.
>
> Except for patrolling the grounds at Surplus Property, the Office of Administration is limiting its law

> enforcement activities to the Capitol, the Jefferson Building, the Highway and Transportation Building, the Governor's Mansion, the Lohman's Landing facilities, the Supreme Court Building, the Broadway Building, the parking garages at the northeast and northwest corners of the Capitol, the EDP and Health Lab Buildings, the State Information Center now under construction, the Highway and Transportation garage, and all associated grounds and parking lots.

Section 8.035, RSMo 1986, provides:

> 8.035. Capitol guards and watchmen, how employed, oath, peace officer powers.--The commissioner of administration may employ guards and watchmen required at the seat of government within the limits of the appropriation. Each guard and watchman employed, before entering on his duties, shall take and subscribe an oath of office to perform his duties faithfully and impartially, and shall be given a certificate of appointment, a copy of which shall be filed with the secretary of state, granting him the same powers now held by other peace officers to maintain order, preserve the peace and make arrests in the buildings at the seat of government and on the grounds thereof. [Emphasis added.]

In State ex rel. Lemon v. Langlie, 273 P.2d 464 (Washington 1954), the Supreme Court of the State of Washington considered the meaning of the phrase "seat of government." That court stated:

> We point out at the outset that this court is not concerned with the wisdom or desirability of maintaining these state offices either in Seattle or Olympia. We have nothing to do with any considerations of policy, efficiency, economy or public convenience. Our function is solely to interpret the provisions of the state constitution which bear upon the authority of respondents (other than the Governor) to act in the premises. The

> problem presented is purely a question of constitutional law.
>
> In order to decide whether the offices of the thirteen state agencies must be maintained at the "seat of government," we should inquire first what the phrase "seat of government" means.
>
> The brief of the Attorney General in behalf of the heads of the thirteen state agencies defines the phrase "seat of government" by quoting Webster's New International Dictionary, 2nd ed., as follows:
>
> > "A place, especially a city, from which authority is exercised; capital; as, a seat of government."
>
> In their brief the taxpayers accept the definition relied upon by respondents and assert that the facts in this case disclose that the city from which a portion of executive authority of the state is being exercised by these thirteen agencies is Seattle, not Olympia, the capital city.

Id., at 471.

The court concluded that certain executive agencies required by the state constitution to be located at the "seat of government" should be maintained in Olympia, the state capital, rather than in Seattle. From the discussion by the court in this case, it is evident the court considered the phrase "seat of government" to refer to the capital city. Applying the reasoning in that case to the question you have posed leads to the conclusion that "at the seat of government" in Section 8.035 refers to property located in the City of Jefferson, rather than only property located near the State Capitol Building.

Article III, Section 39(8) of the present Missouri Constitution provides the General Assembly shall not have the power to remove "the seat of government from the City of Jefferson." This provision is consistent with provisions in earlier Missouri Constitutions dealing with this subject. For example, Article XI, Section X of the 1865 Missouri Constitution stated: "The seat of government of this state, shall remain at the City of Jefferson." This constitutional language referring to the "seat of government" and the "City of Jefferson" lends further support to the conclusion that "at the seat of government" in Section 8.035 refers to property located in the City of Jefferson.

Commissioner James R. Moody

This office in prior opinions has considered the meaning of the phrase "seat of justice" or "county seat" as it applies to counties, Opinion No. 88, Seier, 1971, and Opinion No. 146, Brant, 1976. A copy of each is enclosed. In these opinions, this office indicated "county seat" referred to any place within the city limits of the city designated as county seat. These opinions dealing with counties are consistent with concluding "at the seat of government" in Section 8.035 refers to property located in the City of Jefferson.

Section 8.035 refers to guards and watchmen maintaining order, preserving the peace and making arrests in the buildings at the seat of government and on the grounds thereof. [Emphasis added.] In determining intent and meaning of words as used in a statute, words must be considered in their context, and sections of statutes in pari materia, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of words. State ex rel. Wright v. Carter, 319 S.W.2d 596, 600 (Mo. banc 1958). In construing the terms "buildings" and "on the grounds thereof" in Section 8.035, such terms must be considered in context. Section 8.010, RSMo 1986, refers to the board of public buildings having general supervision and charge of the public property of the state at the seat of government. We conclude that Section 8.035 refers only to buildings and the grounds thereof which are the public property of the state.

CONCLUSION

It is the opinion of this office that "buildings at the seat of government and on the grounds thereof" in Section 8.035, RSMo 1986, refers to public property of the state located in the City of Jefferson.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 88, Seier, 1971
Opinion No. 146, Brant, 1976

COLLECTION OF TAXES:
DEPARTMENT OF REVENUE:
LOTTERY COMMISSION:
OFFICE OF ADMINISTRATION:

The Director of the Department of Revenue is authorized to disclose confidential tax information to the following parties for the following purposes: 1) the State Lottery Commission in order to offset existing tax liabilities against lottery prizes in accordance with Section 313.321.6, RSMo Supp. 1990; 2) the Office of Administration in order to offset pursuant to Section 140.855, RSMo 1986, existing tax liabilities against sums the state owes to vendors who have entered into contracts with the state; 3) private attorneys and/or professional collection agencies in order to collect pursuant to Section 140.850, RSMo 1986, taxes owed to the Director of Revenue; and 4) the "quick print" facility operated by the Office of Administration to the extent necessary for copying records.

November 26, 1991

OPINION NO. 36-91

Raymond T. Wagner, Jr., Director
Department of Revenue
Post Office Box 311
Jefferson City, Missouri 65102

Dear Director Wagner:

This opinion is in response to the following questions submitted by the prior Director of Revenue:

> The Director of Revenue requests an Attorney General's opinion on the appropriateness of sharing confidential tax information with:
>
> (1) The State Lottery Commission in order to offset existing tax liabilities against lottery prizes exceeding $5,000 in accordance with [§ 313.321.6, RSMo Supp. 1990].
>
> (2) The Office of Administration in order to offset existing tax liabilities against sums the state owes to vendors who have entered into contracts with the state pursuant to § 140.855, RSMo 1986.

(3) Private attorneys and/or professional collection agencies in order to collect taxes owed to the Director of Revenue pursuant to § 140.850, RSMo 1986.

(4) The "quick print" facility operated by the Office of Administration--the sharing involved here only reflects any information which might be acquired in the process of copying the records of the Department of Revenue.

Your questions must be addressed in light of Section 32.057, RSMo 1986, which provides in pertinent part:

> 32.057. Confidentiality of tax returns and department records--exceptions --penalty for violation.--1. Except as otherwise specifically provided by law, it shall be unlawful for the director of revenue, any officer, employee, agent or deputy or former director, officer, employee, agent or deputy of the department of revenue, any person engaged or retained by the department of revenue on an independent contract basis, any person to whom authorized or unauthorized disclosure is made by the department of revenue, or any person who lawfully or unlawfully inspects any report or return filed with the department of revenue or to whom a copy, an abstract or a portion of any report or return is furnished by the department of revenue to make known in any manner, to permit the inspection or use of or to divulge to anyone any information relative to any such report or return, any information obtained by an investigation conducted by the department in the discharge of official duty, or any information received by the director in cooperation with the United States or other states in the enforcement of the revenue laws of this state. Such confidential information is limited to information received by the department in connection with the administration of the tax laws of this state.

> 2. Nothing in this section shall be construed to prohibit:
>
> (1) The disclosure of information, returns, reports, or facts shown thereby, as described in subsection 1 of this section, by any officer, clerk or other employee of the department of revenue charged with the custody of such information:
>
> * * *
>
> (b) In any action or proceeding, civil, criminal or mixed, brought to enforce the revenue laws of this state;
>
> * * *
>
> 3. Any person violating any provision of subsection 1 or 2 of this section shall, upon conviction, be guilty of a class D felony.
>
> * * *

In State ex rel. Von Hoffman Press, Inc. v. Saitz, 607 S.W.2d 219 (Mo.App., E.D. 1980), the Missouri Court of Appeals discussed the purpose and application of Section 32.057, RSMo. The court observed that:

> Confidentiality of returns is a statutory privilege granted to taxpayers to facilitate tax administration. Limited confidentiality is merely one procedure or method by which the government seeks to encourage honesty in reporting and to avoid the risk of loss of the documents and the inconvenience of frequent demands for the production of returns.

Id., 607 S.W.2d at 221. The Court continued:

> Section 32.057 was enacted to provide uniform confidentiality for all taxes administered by the Department of Revenue. Its primary purpose is to prevent unauthorized disclosure of confidential information. The statute prohibits

> voluntary disclosure, but was not intended to impede justice by prohibiting the production of necessary records in judicial proceedings. This provision should be construed so that legitimate judicial inquiry is not limited and the right of a litigant to call for evidence affecting his substantive rights is not unnecessarily infringed.

Id., at 222.

Section 313.321.6, RSMo Supp. 1990, relating to the question of offsetting of existing tax liabilities against lottery prizes provides:

> 313.321. State lottery fund, established--distribution of funds--imprest prize fund, created, uses--collection, investment, use of lottery funds--taxation, set-off of prizes, when--restrictions for licensees.--
>
> * * *
>
> 6. The director of revenue is authorized to enter into agreements with the lottery commission, in conjunction with the various state agencies pursuant to sections 143.782 to 143.788, RSMo, in an effort to satisfy outstanding debts to the state from the lottery winning of any person entitled to receive lottery payments which are subject to federal withholding.
>
> * * *

Section 140.855, RSMo 1986, relating to the offsetting of existing tax liabilities against sums owed to vendors by the state provides:

> 140.855. Vendors, office of administration to pay funds due vendors into state treasury, when--notice, contents--hearing, procedure, effect of failure to request.--1. If a vendor identified by the department of revenue is determined by the department to owe tax, the office of administration shall transfer

> an amount equal to the tax owed from the payment due the vendor not to exceed the amount of tax owed to the state treasurer.
>
> * * *

Section 140.850, RSMo 1986, authorizing the Department of Revenue to enter into contracts with private attorneys and collection agencies for the collection of delinquent taxes provides:

> 140.850. Contracts with private attorneys or collection agencies for assistance.--For all taxes administered by the department of revenue, the director may enter into contracts with private attorneys or professional collection agencies for the collection of delinquent taxes owed by residents or nonresidents of the state of Missouri; except that, any contract let pursuant to this section shall be awarded in the manner prescribed by chapter 34, RSMo, and shall be subject to appropriation made therefor. Any contract entered into pursuant to this section shall not provide for a collection fee in excess of twenty-five percent of the amount collected.

When construing statutes, it is necessary to ascertain the legislature's intent in enacting the measure and to give effect to the plain language of the statute viewed as a whole. A. B. v. Frank, 657 S.W.2d 625, 628 (Mo. banc 1983). Statutes relating to the same subject are to be considered together and harmonized if possible so as to give meaning to all provisions of each. State ex rel. LeBeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985).

Section 32.057, RSMo 1986, can be harmonized with Section 313.321, RSMo Supp. 1990, Section 140.855, RSMo 1986, and Section 140.850, RSMo 1986. As illustrated by State ex rel. Von Hoffman Press, Inc. v. Saitz, supra, Section 32.057 is not an absolute bar to all disclosures.

Section 32.057.2(1)(b), RSMo 1986, allows disclosure in "any action or proceeding, civil, criminal or mixed, brought to enforce the revenue laws of this state." The word "proceeding" is a broad term which encompasses not only lawsuits filed in a court, but also "administrative proceedings before agencies, tribunals, bureaus, or the like." Black's Law Dictionary (5th

Ed. 1979) p. 1083. This term is broad enough to include the non-judicial administrative collection procedures provided by Section 313.321, RSMo Supp. 1990, and Section 140.855, RSMo 1986. Thus, disclosures necessary to conduct these proceedings are authorized by Section 32.057.2(1)(b). If Section 32.057, RSMo 1986, were construed as prohibiting disclosure in these instances, it would in effect nullify Section 313.321, RSMo Supp. 1990, Section 140.855, RSMo 1986, and Section 140.850, RSMo 1986.

These provisions must also be construed in the context of Sections 143.782 to 143.788, RSMo 1986, to provide for state agencies to offset debts owed to them against state tax refunds due to their debtors. Section 143.788, RSMo 1986, provides:

> 143.788. Confidential information, disclosure by department, when, exception--limitation on use, violation, penalties.--1. The provisions of section 32.057, RSMo, and any other confidentiality statute of this state to the contrary notwithstanding, the department may provide any state agency submitting a claim for setoff and collection under sections 143.782 to 143.788 all information necessary to accomplish and carry out the provisions of sections 143.782 to 143.788, but shall not provide any state agency with any information whose disclosure is prohibited by Section 6103(d) of the Internal Revenue Code.
>
> 2. The information obtained by a state agency from the department of revenue in accordance with the provisions of sections 143.782 to 143.788 shall retain its confidentiality and shall only be used by another state agency in the pursuit of its debt collection duties and practices; and any employee or prior employee of any state agency who unlawfully discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to the same penalties specified by section 32.057, RSMo, for unauthorized disclosure of confidential information by an agent or employee of the department of revenue.

The disclosures necessary to fulfill the intent of the legislature in enacting Section 313.321, RSMo Supp. 1990, and Section 140.855, RSMo 1986, are analogous to those authorized by Sections 143.782 to 143.788, RSMo 1986, for a similar purpose.

The attorneys and collection agencies who will receive information from the Department of Revenue pursuant to Section 140.850, RSMo 1986, as well as the employees of the Office of Administration's "quick print" shop will be acting at the direction and on behalf of the Director of Revenue. In doing so, they will be acting as the Director's agents. This office has previously opined that the Department of Mental Health may release otherwise confidential information to its agents in order to collect fees for care and treatment, provided that the Department of Mental Health maintains strict control over those individuals to assure that the information released is used only as authorized. See, Attorney General Opinion Letter No. 19-88, a copy of which is enclosed. The reasoning of that opinion is equally applicable here. See also Attorney General Opinion Letter No. 166, Goldberg, 1978, a copy of which is enclosed, wherein this office concluded that the Department of Revenue could utilize the Office of Administration's consolidated state data center for the processing of tax returns without violating the confidentiality provisions of several different revenue laws in effect at that time.

We conclude that permitting disclosure in the four instances about which you inquire will not negate the purpose of Section 32.057, RSMo 1986. The individuals who will receive information, like the employees of the Department of Revenue, are prohibited by this statute from divulging this information to unauthorized individuals and from using it for any unauthorized purposes. Disclosure to this limited group of individuals does not mean that the information will lose all protection from Section 32.057; the information will not become a part of the public record and thus the objectives of Section 32.057 noted in State ex rel. Von Hoffman Press, Inc. v. Saitz, supra, will be met.

CONCLUSION

It is the opinion of this office that the Director of the Department of Revenue is authorized to disclose confidential tax information to the following parties for the following purposes: 1) the State Lottery Commission in order to offset existing tax liabilities against lottery prizes in accordance with Section 313.321.6, RSMo Supp. 1990; 2) the Office of Administration in order to offset pursuant to Section 140.855, RSMo 1986, existing tax liabilities against sums the state owes

to vendors who have entered into contracts with the state; 3) private attorneys and/or professional collection agencies in order to collect pursuant to Section 140.850, RSMo 1986, taxes owed to the Director of Revenue; and 4) the "quick print" facility operated by the Office of Administration to the extent necessary for copying records.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion Letter No. 19-88
Opinion Letter No. 166, Goldberg, 1978

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
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July 10, 1991

OPINION LETTER NO. 38-91

Donna M. White, Director
Missouri Department of
Labor and Industrial Relations
Post Office Box 58
Jefferson City, Missouri 65102

Dear Director White:

This opinion is in response to your question asking:

> Whether requirements under Sections 287.410, 287.650, 287.280, 287.320, 287.330 and 287.800, RSMo, concerning workers' compensation matters provide sole authority for; are in addition to; or are superseded and precluded by Section 537.620, RSMo, for a group of political subdivisions providing thereunder liability and other lines of insurance, and including workers' compensation coverage.

Sections 537.620 to 537.650, RSMo, authorize three or more political subdivisions of the State to form an association to provide insurance for its members. Section 537.620, RSMo Supp. 1990, provides:

> 537.620. Political subdivisions may jointly create entity to provide insurance.--Notwithstanding any direct or implied prohibitions in chapter 375, RSMo, 377, RSMo, or 379, RSMo, any three or more political subdivisions of this state may form a business entity for the purpose of providing liability and all other insurance for any of the subdivisions upon the assessment plan as provided in sections 537.600 to 537.650. Any political

> subdivision may join this entity and use public funds to pay any necessary assessments.

Section 537.620, RSMo, was originally enacted by Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Substitute for House Bill No. 1650, 79th General Assembly, Second Regular Session (1978), and allowed business entities created pursuant to its provisions to provide only liability insurance. This section was amended by Conference Committee Substitute for Senate Committee Substitute for Senate Bill No. 532, 84th General Assembly, Second Regular Session (1988), allowing such a business entity to provide "liability and all other insurance." [Emphasis added.]

In construing a statute, legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). Based on the plain meaning of Section 537.620, RSMo Supp. 1990, a business entity formed by any three or more political subdivisions of the state is authorized to provide workers' compensation insurance as provided in such section.

The director of insurance is authorized to oversee Section 537.620 entities. Section 537.625, RSMo Supp. 1990, requires such an entity to "pay a license fee of one hundred dollars and file articles of association with the director of insurance." Section 537.625.1, RSMo Supp. 1990. Section 537.630, RSMo 1986, requires the director of insurance to review the filed articles of association and determine if the proposed association meets the requirements set out in Sections 537.600 to 537.650, RSMo. If so, the director of insurance issues a license to the association authorizing it to do business for a one year period. Section 537.630, RSMo 1986. Section 537.640.1, RSMo 1986, authorizes the director of insurance to examine the affairs of any association organized under Sections 537.620 to 537.650, RSMo, and to "make such rules and regulations as may be necessary for the execution of the functions vested in him." If a Section 537.620 entity fails or refuses to pay a claim finally adjudged to be due or is unable to satisfy its contractual obligations, the director of insurance is authorized to "take charge of the association, its assets and affairs, and wind up same. . . ." Section 537.645, RSMo 1986.

Chapter 287, RSMo, is known as "The Workers' Compensation Law." Section 287.280.1, RSMo 1986, generally requires "[e]very employer subject to the provisions of this chapter shall insure his entire liability thereunder, except as hereafter provided,

with some insurance carrier authorized to insure such liability in this state. . . ." Within Chapter 287, RSMo, there are alternative methods for providing the required protection. Section 287.280.1, RSMo 1986, provides in part:

> . . . an employer or group of employers may themselves carry the whole or any part of the liability without insurance upon satisfying the division of their ability so to do. . . . When a group of employers enter into an agreement to pool their liabilities under this chapter, individual members will not be required to qualify as individual self-insurers.

In addition to the provisions for self-insurers, an alternate method of providing insurance is found in Section 287.370, RSMo 1986, which states:

> 287.370. Compensation in lieu of insurance, how provided.--Any employer or group of employers may enter into or continue any agreement with his or their employees to provide a system of compensation benefits or insurance in lieu of the compensation and insurance provided by this chapter. Such substitute system and insurance shall be subject to the approval of the director of the insurance division and shall not be approved by him unless they confer benefits upon injured employees or their dependents at least equivalent to the benefits provided by this chapter, nor if they require contributions from employees, unless they confer benefits in addition to those provided under this chapter at least commensurate with such contribution. Appeals shall lie to the commission from any decision, award or order made by or under such substitute system. Such substitute system and insurance may be terminated by the director of the insurance division on reasonable notice and hearing to the interested parties, if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency or if for any other substantial reason it fails to

> accomplish the purposes of this chapter; and in this case the director of the insurance division shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to have such action reviewed by a court of competent jurisdiction.

In addition to the alternatives provided in Chapter 287, RSMo, Sections 537.620 to 537.650 offer another alternative for political subdivisions to provide the required protection. Your question requests we determine whether certain sections in Chapter 287, RSMo, apply to the alternative created by Sections 537.620 to 537.650.

Statutes relating to the same subject are to be considered together and harmonized if possible so as to give meaning to all the provisions of each. State ex rel. Lebeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985). As stated in Laughlin v. Forgrave, 432 S.W.2d 308, 313 (Mo. banc 1968):

> Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy, but to the extent of any necessary repugnancy between them the special will prevail over the general statute.

Chapter 287, RSMo, deals with workers' compensation in general while Sections 537.620 to 537.650 deal specifically with an alternative method for political subdivisions to provide workers' compensation protection. We will attempt to read together and harmonize Chapter 287, RSMo, and Sections 537.620 to 537.650; however, to the extent there is any repugnancy between Chapter 287, RSMo, and Sections 537.620 to 537.650, the provisions of Sections 537.620 to 537.650 will prevail.

Within this context, we review the specific statutory sections cited in your question and their applicability to a Section 537.620 entity.

I. Section 287.410, RSMo 1986--Section 287.410, RSMo 1986, authorizes the Division of Workers' Compensation to:

> have and exercise such of the powers and functions of the commission in the administration of the workers' compensation law as the commission may by regulation prescribe; provided, however, that the power and duty to review any award made under the workers' compensation law, as authorized by sections 287.470 and 287.480, may not be delegated, but such power and duties shall be exercised exclusively by the commission. . . .

Sections 537.620 to 537.650 are silent on the matter of review of workers' compensation claims. Pursuant to Section 287.410, RSMo 1986, review of awards is to be by the commission.

II. Section 287.650, RSMo 1986--Section 287.650, RSMo 1986, authorizes the Division of Workers' Compensation to make rules and regulations. A Section 537.620 entity must comply with rules and regulations promulgated pursuant to Section 287.650 to the extent such rules and regulations are not inconsistent with Sections 537.620 to 537.650.

III. Section 287.280, RSMo 1986--As discussed previously, Sections 537.620 to 537.650 are an alternative to Section 287.280. Therefore, the provisions of Section 287.280 do not apply to a Section 537.620 entity.

IV. Section 287.320, RSMo 1986--Section 287.320, RSMo 1986, requires a schedule of rates and classification of risks to be filed by every insurance carrier or group of carriers authorized to insure against liability under Chapter 287, RSMo. However, Section 287.320.1, RSMo 1986, provides the following exception:

> . . . [t]he provisions of this section as to rates and classifications shall not apply to employers who provide among themselves insurance or indemnity against liability under this chapter, on the reciprocal, interinsurance or mutual plan, except that the classifications shall be approved by the director of the division of insurance and that the rates for such insurance or indemnity shall not be less

> than the rates approved by the director of the division of insurance as sufficient to provide for the payment of the compensation provided by this chapter.

This exception is applicable to a Section 537.620 entity.

V. Section 287.330, RSMo 1986--Section 287.330, RSMo 1986, allows a corporation, an unincorporated association, a partnership or an individual to make application to the director of insurance for a license as a rating organization. There is nothing within the statute that would prohibit its application to an entity formed pursuant to Section 537.620, RSMo Supp. 1990.

VI. Section 287.800, RSMo 1986--Section 287.800, RSMo 1986, provides that the provisions of Chapter 287, RSMo, should be liberally construed "with a view to the public welfare, and a substantial compliance therewith shall be sufficient to give effect to rules, regulations, requirements, awards, orders or decisions of the division and the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto." To the extent that the activities of an entity formed pursuant to Section 537.620 involve statutes contained within Chapter 287, RSMo, such statutes are to be interpreted pursuant to the guidance found in Section 287.800, RSMo 1986.

In summary, it is the opinion of this office that the provisions of Chapter 287, RSMo, apply to an entity created pursuant to Section 537.620, RSMo Supp. 1990, except where the provisions of Sections 537.620 to 537.650, RSMo, are inconsistent with Chapter 287, RSMo.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

MARRIAGE LICENSE FEES:
MARRIAGE LICENSES:
MARRIAGES:
RECORDER OF DEEDS:
RECORDING:

A county recorder of deeds should charge the four dollar ($4.00) user fee provided in Section 59.319, RSMo Supp. 1990, on the recording of a marriage license.

September 18, 1991

OPINION NO. 41-91

The Honorable Matt O'Neill
Representative, District 66
State Capitol Building, Room 415B
Jefferson City, Missouri 65101

Dear Representative O'Neill:

This opinion is in response to your inquiry as to whether or not a county recorder of deeds should charge the "user fee" on marriage licenses.

The authority for a county recorder of deeds to assess a user fee is Section 59.319, RSMo Supp. 1990, which provides in part:

> 1. A user fee of four dollars shall be charged and collected by every recorder in this state, over and above any other fees required by law, as a condition precedent to the recording of any instrument. . . .

Section 59.319, RSMo Supp. 1990, was amended in 1989 by Conference Committee Substitute for Senate Committee Substitute for House Bill No. 786, 85th General Assembly, First Regular Session. These legislative changes were addressed in Attorney General Opinion No. 50-90, a copy of which is enclosed. House Bill No. 786 deleted the language "conveying real property or any interest therein" after the word "instrument" so that the user fee is now charged on "the recording of any instrument." In Opinion No. 50-90 this office considered the meaning of the word "instrument" and stated therein on page 2:

> The word "instrument" is not defined in Section 59.319; thus, one is to consider the word "instrument" in its plain and ordinary meaning. An instrument is "[a] written document; a formal or legal document in writing, such as a contract, deed, will, bond or lease." Black's Law Dictionary 719 (5th Ed. 1979).

The Honorable Matt O'Neill

The first issue for consideration is whether a marriage license constitutes an "instrument." Section 451.080, RSMo 1986, relating to the form of the marriage license, provides:

> 451.080. Recorder to issue license--form of.--1. The recorders of the several counties of this state, and the recorder of the city of St. Louis, shall, when applied to by any person legally entitled to a marriage license, issue the same which may be in the following form:
>
> State of Missouri)
>)ss.
>)
> County of _____)
>
> This license authorizes any judge, associate circuit judge, licensed or ordained preacher of the gospel, or other person authorized under the laws of this state, to solemnize marriage between A B of _____, county of _____ and state of _____, who is _____ the age of eighteen years, and C D of _____, in the county of _____, state of _____, who is _____ the age of eighteen years.
>
> 2. If the man is under eighteen or the woman under eighteen, add the following:
>
> The father or mother or guardian, as the case may be, of the said A B or C D (A B or C D, as the case may require), has given his or her assent to the said marriage.
>
> Witness my hand as recorder, with the seal of office hereto affixed, at my office, in _____, the ____ day of _____, 19__, recorder.
>
> 3. On which said license the person solemnizing the marriage shall, within ninety days after the issuing thereof, make as near as may be the following return, and return such license to the officer issuing the same:

The Honorable Matt O'Neill

State of Missouri)
)ss.
)
County of _____)

This is to certify that the undersigned _____ did at _____, in said county, on the ____ day of _____ A.D. 19__, unite in marriage the above-named persons.

Based on the plain and ordinary meaning of the word "instrument" as discussed above and in Opinion No. 50-90, we conclude that the phrase "any instrument" in Section 59.319 does include a marriage license.

The next issue for consideration is whether a marriage license is "recorded." Section 451.150, RSMo Supp. 1990, provides:

> 451.150, Licenses to be recorded--fee.--The recorder shall record all marriage licenses issued in a well-bound book kept for that purpose, with the return thereon, for which he shall receive a fee of ten dollars to be paid for by the person obtaining the same. [Emphasis added.]

Based on Section 451.150, a marriage license is recorded.

In summary, a marriage license is an "instrument" as the term is used in Section 59.319. Pursuant to Section 451.150, such marriage license is recorded. Therefore, we conclude that a county recorder of deeds should charge the "user fee" provided in Section 59.319 on the recording of marriage licenses.

CONCLUSION

It is the opinion of this office that a county recorder of deeds should charge the four dollar ($4.00) user fee provided in Section 59.319, RSMo Supp. 1990, on the recording of a marriage license.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 50-90

DEPARTMENT OF PUBLIC SAFETY:
WATER PATROL:
WATERCRAFT:

A sailboard is not a "vessel" or "watercraft" as defined in Section 306.010, RSMo Supp. 1990, and Section 306.100, RSMo Supp. 1990, does not require a personal flotation device when using a sailboard.

April 12, 1991

OPINION NO. 43-91

The Honorable B. J. Marsh
Representative, District 136
State Capitol Building, Room 103B-C
Jefferson City, Missouri 65101

Dear Representative Marsh:

This opinion is in response to your question asking:

> Is a sailboard a watercraft as defined in M.S. 306.010-5 & 6; and does the flotation device requirement as described in M.S. 306.100-7 & 8 apply to sailboards?

Subsections 7 and 8 of Section 306.100, RSMo Supp. 1990, provide:

> 306.100. Classification of vessels--equipment requirements.--
>
> * * *
>
> 7. Every vessel, except those in class A, shall have on board at least one wearable personal flotation device of type I, II or III for each person on board and each person being towed who is not wearing one. Every such vessel shall also have on board at least one type IV throwable personal flotation device.
>
> 8. All class A motorboats and all watercraft traveling on the waters of this state shall have on board at least one type I, II, III or IV personal flotation device for each person on board and each person being towed who is not wearing one.

* * *

Subsections 7 and 8 of Section 306.010, RSMo Supp. 1990,[1] provide:

> 306.010. Definitions.--As used in this chapter the following terms are construed to have the following meanings, except in those instances where the context clearly indicates otherwise:
>
> * * *
>
> (7) "Vessel", every motorboat and every description of motorized watercraft, and any watercraft more than twelve feet in length which is powered by sail alone or by a combination of sail and machinery, used or capable of being used as a means of transportation on water, but not any watercraft having as the only means of propulsion a paddle or oars;
>
> (8) "Watercraft", any boat or craft, including a vessel, used or capable of being used as a means of transport on waters;
>
> * * *

Subsections 7 and 8 of Section 306.100 require personal flotation devices on board certain types of vessels and watercrafts. The definition of "vessel" in subsection 7 of Section 306.010 includes "any watercraft more than twelve feet in length which is powered by sail alone . . . used or capable of being used as a means of transportation on water." [Emphasis added.] Subsection 8 of Section 306.010 likewise includes any boat or craft "used or capable of being used as a

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[1]Your question refers to subsections 5 and 6 of Section 306.010, RSMo. Subsections 5 and 6 of Section 306.010, RSMo 1986, contained the definitions of "vessel" and "watercraft"; however, as a result of statutory amendments in 1989, "vessel" and "watercraft" are now defined in subsections 7 and 8 of Section 306.010, RSMo Supp. 1990.

means of transport on waters." [Emphasis added.] If a sailboard is not "used or capable of being used as a means of transport(ation) on water(s)," then a sailboard is not a "vessel" and not a "watercraft" and no personal flotation device is required. Therefore, the first issue to be considered is whether a sailboard is "used or capable of being used as a means of transport(ation) on water(s)."

The Michigan Court of Appeals in People v. King, 151 Mich. App. 723, 391 N.W.2d 462 (1986), concluded a sailboard was not a "vessel" under the Michigan statute defining a "vessel" to include a requirement of "used or capable of being used as a means of transportation on water." The Michigan Court described a sailboard as follows:

> A sailboard, sometimes also referred to as a windsurfer, is basically a surfboard with a triangular sail on a swivel mounted mast. . . . The operator, standing on the board, pilots the device through the trim of the hand-held sail and distribution of body weight on the surfboard.

Id. at 462.

In discussing whether a sailboard was within the statutory definition of "vessel" the Michigan Court stated:

> The act further defines "vessel" as follows:
>
> > "'Vessel' means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water." M.C.L. § 281.1006(b); M.S.A. § 18.1287(6)(b).
>
> Thus, to come within the scope of 1979 AC, R 281.1248, a sailboard must meet the above definition of "vessel", i.e., it must be "used or capable of being used as a means of transportation on water".

In People v. Heiple, 133 Ill. App. 3d 583, 88 Ill. Dec. 662, 478 N.E.2d 1388 (1985), the Appellate Court of Illinois was faced with an issue almost identical to that presently before us. In Heiple, the defendant was cited for sailboarding without a PFD aboard pursuant to a section of the Illinois Boat Registration and Safety Act making it "unlawful to

operate any watercraft less than 16 feet in length . . . unless at least one Coast Guard approved PFD . . . is on board for each person. . . ." Under the Illinois act, the terms "watercraft" and "vessel" are used interchangeably. Both are given a definition identical to Michigan's above-quoted definition of "vessel". After considering the definition, the Heiple court held that a sailboard is not a "vessel" or "watercraft" within the meaning of the Illinois act, so that an operator need not wear or have attached to the sailboard a PFD. In reaching this conclusion, the court stated:

> "It has been held that everything that floats is not a 'vessel.' (Powers v. Bethlehem Steel Corp. (1st Cir. 1973), 477 F.2d 643, 647, n. 4.) In that case a raft was held not to be a 'vessel'. Other courts have held as a matter of law that certain structures are not 'vessels.' (Leonard v Exxon Corp. (5th Cir. 1978), 581 F.2d 522; Cook v. Belden Concrete Products, Inc., (5th Cir. 1973), 472 F.2d 999.) See also Annot., When Is Vessel in Navigation for Purposes of Jones Act (46 U.S.C. § 688), (1970), 5 A.L.R. Fed. 674.
>
> "Unless a rule of reason is applied, the definition is limited only by one's imagination. One court observed, 'No doubt the three men in a tube would also fit within [that definition] . . . and one probably could make a convincing case for Jonah inside the whale.' (Burks v. American River Transportation Co. (5th Cir. 1982), 679 F.2d 69, 75.) To which query we would add: How about a pontoon bridge? Or a log? Or a personal flotation device itself? Seemingly, by dog paddling with one, a person could transport himself.
>
> "In our opinion a rule of reason must apply. A windsurfer may be used as a means of transportation on water, but it is not commonly so used. In the same sense, it may be capable of being used as a means of transportation on water, but it is not commonly done. A windsurfer is not a 'vessel' or 'watercraft' within the

> definition of the Act as a matter of law. Powers." 478 N.E.2d 1390-1391. (Emphasis in original.)
>
> Similarly, the U.S. Coast Guard has commented that "[t]hrough the use of many thousand sailboards by both experienced and inexperienced sailboarders, it has become apparent that sailboarding has become a sport, similar to surfing or skiing and that sailboards are not normally being used as a means for transportation". 46 Fed.Reg. 42289. Thus, the Coast Guard has decided for regulatory purposes to treat sailboards in a manner similar to water sport items such as inner tubes, inflatable air mattresses, float boards, and surfboards rather than "vessels" subject to regulation under the Federal Boat Safety Act of 1971, 46 U.S.C. 1451 et seq. Id.
>
> We find the reasoning of the Heiple court and the Coast Guard compelling and adopt it as our own. Although a sailboard is "capable of being used as a means of transportation on water" in the broadest sense of that phrase and hence meets the definition of "vessel" in the act, we too apply a rule of reason and conclude that a sailboard is not a "vessel" and not subject to the present administrative rules for associated equipment on a "vessel".

Id. at 463-464.

The Michigan Court further considered the issue of safety. In considering the safety issue, the Michigan Court stated:

> We recognize that the Marine Safety Act was enacted to promote the safe use of Michigan's waters. We assume that the purpose of 1979 AC, R 281.1248 is to protect persons on board a sailboat against loss of life through drowning. We do not believe that our holding in this case runs afoul of these purposes. A sailboard is clearly different in nature from a sailboat and lacks the characteristics of a sailboat which create the safety hazard that the PFD required by the rule was intended to remedy. Unlike a sailboat, a sailboard cannot sail away when its operator falls off. Further, because the board itself is filled with a closed cell foam, it cannot

> sink even if broken apart. In fact, a sailboard itself functions as a PFD. . . . Moreover, sailboarding is a water sport, such as surfing or waterskiing, in which the operator is generally prepared to be in the water. . . . As a practical matter, there is no place on a sailboard to secure a PFD "ready at hand". If the sailboarder must wear a PFD, a greater safety hazard could result. . . . A sailboard's mast is not supported by stays and will drop in the water when released. Sailboarders maintain that, in the surf, wearing a PFD would likely prevent a fallen sailboarder from being able to dive below the surface to escape being battered by his falling equipment. . . . Given these unique characteristics of sailboards, in our opinion the overall purpose of the Marine Safety Act and the equipment rules promulgated pursuant thereto would not be enhanced by interpreting "sailboat" to include sailboards.

Id. at 464

Following the reasoning in People v. King, supra, and the Illinois case cited therein, we conclude that a sailboard does not meet the statutory requirement of "used or capable of being used as a means of transport(ation) on water(s)." Therefore, a sailboard is not a "vessel" or "watercraft" as defined in Section 306.010, and Section 306.100 does not require a personal flotation device when using a sailboard.

CONCLUSION

It is the opinion of this office that a sailboard is not a "vessel" or "watercraft" as defined in Section 306.010, RSMo Supp. 1990, and Section 306.100, RSMo Supp. 1990, does not require a personal flotation device when using a sailboard.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

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July 5, 1991

OPINION LETTER NO. 44-91

Joe Moseley
Boone County Prosecuting Attorney
Boone County Courthouse
Columbia, Missouri 65201

Dear Mr. Moseley:

This opinion letter is in response to your two questions asking:

1. Whether the Boone Hospital Center Board of Trustees, organized under Sections 205.160-.340, RSMo, may relinquish its right to receive proceeds from the "replacement tax" or inventory surtax established under Article X, Section 6 of the Missouri Constitution and implemented under Section 139.600, RSMo, or expend such sums for purposes other than those authorized by Sections 205.190 or 205.200, RSMo?

2. If the Board of Trustees may relinquish its right to receive replacement tax proceeds as outlined above, may the Boone County Clerk recalculate the levy under Section 139.600, RSMo, to reflect such relinquishment? If the county clerk may not recalculate the levy, should the county collector distribute the surplus proceeds from Boone Hospital Center's share of the replacement tax pro rate to other taxing entities, or to the county general fund, or otherwise?

Joe Moseley

The "replacement tax" as it is called is found in Article X, Section 6 of the Missouri Constitution. Article X, Section 6, provides in pertinent part:

> Section 6. Property exempt from taxation.
>
> * * *
>
> 2. All revenues lost because of the exemption of certain personal property of manufacturers, refiners, distributors, wholesalers, and retail merchants and establishments shall be replaced to each taxing authority within a county from a countywide tax hereby imposed on all property in subclass 3 of class 1 in each county. For the year in which the exemption becomes effective, the county clerk shall calculate the total revenue lost by all taxing authorities in the county and extend upon all property in subclass 3 of class 1 within the county, a tax at the rate necessary to produce that amount. The rate of tax levied in each county according to this subsection shall not be increased above the rate first imposed and will stand levied at that rate unless later reduced according to the provisions of subsection 3. The county collector shall disburse the proceeds according to the revenue lost by each taxing authority because of the exemption of such property in that county. Restitution of the revenues lost by any taxing district contained in more than one county shall be from the several counties according to the revenue lost because of the exemption of property in each county. Each year after the first year the replacement tax is imposed, the amount distributed to each taxing authority in a county shall be increased or decreased by an amount equal to the amount resulting from the change in that district's total assessed value of property in subclass 3 of class 1 at the countywide replacement tax rate. In order to implement the provisions of this subsection, the limits set in section 11(b) of this article may be

> exceeded, without voter approval, if necessary to allow each county listed in section 11(b) to comply with this subsection.
>
> 3. Any increase in the tax rate imposed pursuant to subsection 2 of this section shall be decreased if such decrease is approved by a majority of the voters of the county voting on such decrease. A decrease in the increased tax rate imposed under subsection 2 of this section may be submitted to the voters of a county by the governing body thereof upon its own order, ordinance, or resolution and shall be submitted upon the petition of at least eight percent of the qualified voters who voted in the immediately preceding gubernatorial election.
>
> 4. As used in this section, the terms "revenues lost" and "lost revenues" shall mean that revenue which each taxing authority received from the imposition of a tangible personal property tax on all personal property held as industrial inventories, including raw materials, work in progress and finished work on hand, by manufacturers and refiners, and all personal property held as goods, wares, merchandise, stock in trade or inventory for resale by distributors, wholesalers, or retail merchants or establishments in the last full tax year immediately preceding the effective date of the exemption from taxation granted for such property under subsection 1 of this section, and which was no longer received after such exemption became effective.

This constitutional provision was implemented by Section 139.600, RSMo 1986, which provides:

> 139.600. Exemption of merchants' and manufacturers' tangible personal property, lost revenues defined--replacement tax revenues, distribution of.--1. To implement the provisions of section 6, of article X of the Missouri Constitution, the amount received by each taxing authority

for the preceding year which will be "lost revenues" as defined in subsection 4 of section 6 of article X of the Missouri Constitution and resulting from the exemption of certain personal property of manufacturers, refiners, distributors, wholesalers, and retail merchants and establishments, shall be determined by each county clerk as of March thirty-first of the year the exemption becomes effective and shall include any delinquent taxes received during the preceding year and taxes for the preceding year which have been received by the collector but are subject to an appeal as of that date. The levy to be charged against the assessed valuation of real property listed in subclass (3) of class 1 of section 4(b) of article X of the Missouri Constitution necessary to produce the total revenues lost by all taxing authorities in the county shall be determined by each county clerk no later than September first of the year the replacement tax is first imposed. The exemption of certain personal property of manufacturers, refiners, distributors, wholesalers, and retail merchants and establishments under section 6 of article X of the Missouri Constitution shall not become effective in any county or city not within a county of this state until January 1, 1985, upon which date such exemption shall be effective in all counties and cities not within a county in this state.

2. For the first year in which a replacement tax is imposed under this section, the total replacement revenues received by the county collector shall be distributed as provided in subsection 2 of section 6 of article X of the Missouri Constitution at such time or times as he deems appropriate. The total amount available for distribution as replacement revenues for such first year in which a replacement tax is imposed shall be that amount received from the replacement tax as of January thirty-first of the year immediately following the year the replacement tax is first imposed.

3. For the second and each succeeding year in which a replacement tax is imposed under this section, the total amount of replacement revenue available to each county for distribution shall be the amount received by each county during the previous twelve months, as of January thirty-first of the following year. The amount of replacement revenue to be distributed to each taxing authority within each county shall be calculated by multiplying the total amount of replacement revenues to be distributed by a fraction which shall have:

(1) A numerator which is determined by taking the amount of "lost revenues" as defined in subsection 4 of section 6 of article X of the Missouri Constitution, of such taxing authority, and multiplying the amount of such lost revenues by the percentage which the then current assessed valuation of real property in the taxing authority in subclass (3) of class 1 property, as set out in section 4(b) of article X of the Missouri Constitution, is of the assessed valuation of such property on January first of the first year the replacement tax was imposed, using in both instances the taxing authority's boundaries as they existed on January first of the first year the replacement tax was imposed;

(2) A denominator which is the sum of all figures calculated under subdivision (1) of this subsection for each taxing authority within the county.

4. If any taxing authority which is receiving replacement revenues annexes additional property, such property shall not be included in the calculations made under subdivision (1) of subsection 3 of this section. If any two or more taxing authorities merge, the amount determined under subdivision (1) of subsection 3 of this section for the resulting taxing authority shall be the sum of the amounts, if any, determined under subdivision (1) of subsection 3 for each of the taxing authorities merged.

Joe Moseley

We understand Boone Hospital Center is a county hospital organized under the provisions of Sections 205.160 to 205.340, RSMo. Along with your questions, you state:

> In 1988 the Boone Hospital Center Board of Trustees entered into a lease of the county hospital facility with C H Allied Services, Inc. [U]nder the lease the lessee assumed virtually all responsibility for the operation and maintenance of the hospital. The Board of Trustees annually receives a share of the inventory surtax or replacement tax established and authorized under Article X, Section 6 of the Missouri Constitution and section 139.600 RSMo. . . . The Board of Trustees no longer has a need to receive its share of the proceeds to this tax. In 1989-90 the State Auditor conducted a petition audit of the hospital. The auditor recommended that the county seek an Attorney General's opinion concerning whether the surplus proceeds could be distributed to other taxing entities or to the general fund. . . .

The first part of your first question asks whether the Boone Hospital Center Board of Trustees may relinquish its right to receive proceeds from the replacement tax. Pursuant to Article X, Section 6 of the Missouri Constitution, the county collector disburses the proceeds from the replacement tax to taxing authorities within the county. The taxing authority of the Boone Hospital Center Board of Trustees arises under Section 205.200, RSMo 1986, and, therefore, the Boone Hospital Center Board of Trustees is a taxing authority for the purposes of Article X, Section 6 of the Missouri Constitution. Accordingly, the Boone Hospital Center Board of Trustees has been receiving a portion of the replacement tax in Boone County. There is no provision in Article X, Section 6 of the Missouri Constitution or in Section 139.600, RSMo 1986, authorizing the Boone Hospital Center Board of Trustees to relinquish its right to receive proceeds from the replacement tax. Therefore, we conclude that the Boone Hospital Center Board of Trustees may not relinquish its right to receive proceeds from the replacement tax. Likewise, there is no authority for any county official to reduce the countywide surtax or reallocate the proceeds of the replacement tax under the facts you have presented.

The second part of your first question asks whether the Boone Hospital Center Board of Trustees may expend replacement tax proceeds for purposes other than those authorized by

Sections 205.190 or 205.200, RSMo. The Board's taxing authority arises under Section 205.200, RSMo 1986, which empowers the county commission to levy a property tax to pay for maintenance and improvement of a public hospital and for constructing and furnishing necessary additions thereto as certified by the Board of Trustees. "The funds arising from the tax levied for such purpose shall be used for the purpose for which the tax was levied and none other." Section 205.200, RSMo, 1986. This section has been construed to restrict expenditure of tax moneys collected by the hospital Board of Trustees to expenditures solely for the hospital purposes provided by statute. See, Attorney General Opinion No. 128, White, May 31, 1967 and Attorney General Opinion No. 72, Powell, April 20, 1960. A copy of each is enclosed. Furthermore, Section 205.190, RSMo Supp. 1990, provides ". . . that all moneys received for such hospital shall be credited to the hospital and deposited into the depositary thereof for the sole use of such hospital in accordance with the provisions of sections 205.160 to 205.340." Section 205.190.3, RSMo Supp. 1990. Therefore, we conclude the Boone Hospital Center Board of Trustees may not expend proceeds from the replacement tax for any purpose other than hospital purposes provided by statute.

Your second question presupposes that the Board of Trustees may decline or otherwise not receive replacement tax proceeds and then inquires whether the Boone County Clerk may recalculate the levy under Section 139.600, RSMo, to reflect such fact. Since it is the opinion of this office that the Boone Hospital Center Board of Trustees continues to receive proceeds from the replacement tax, we do not address your second question.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 128, White, May 31, 1967
Opinion No. 72, Powell, April 20, 1960

BALLOTS:
CITIES, TOWNS AND VILLAGES:
CITY ELECTIONS:
CITY MARSHAL:
ELECTIONS:
TERM OF OFFICE:
THIRD CLASS CITIES:

The person elected city marshal on April 3, 1990, in a third class city subject to Section 77.370, RSMo Supp. 1990, serves a four year term as provided in Section 77.370 despite a city ordinance stating the term shall be two years and despite a phrase on the ballot indicating the term would be two years.

February 8, 1991

OPINION NO. 46-91

The Honorable Jeff W. Schaeperkoetter
Senator, District 23
State Capitol Building, Room 434
Jefferson City, Missouri 65101

Dear Senator Schaeperkoetter:

This opinion is in response to your question concerning the term of office of the city marshal for the City of Louisiana. You state your question as follows:

> Do the official ballot and city ordinance in an election for marshal of the City of Louisiana, which occurred in April of 1990, take precedence over Section 77.370 (4) which sets the term of office at four years, when the official ballot and city ordinance, refer to a 2-year term for that office?

Based on your question, we presume the City of Louisiana is a third class city to which Section 77.370, RSMo, applies.

Section 25-31 of the City of Louisiana Code which you have provided to us states:

> At the general election held on the first Tuesday in April in even-numbered years, the qualified voters of the city shall elect some suitable person as city marshal who shall hold office for two (2) years and until his successor is elected and qualified.

The Honorable Jeff W. Schaeperkoetter

You have provided to us a copy of the ballot apparently used at the April 3, 1990 election. With respect to the election of a city marshal, the ballot includes the following language:

FOR CITY MARSHAL
(2 YEAR TERM)
(VOTE FOR ONE)

Section 77.370, RSMo Supp. 1990, provides:

> 77.370. Elective officers--option to appoint certain officers--terms.--1. Except as hereinafter provided, the following officers shall be elected by the voters of the city: Mayor, police judge, attorney, assessor, collector, treasurer and, except in cities which adopt the merit system police department, a marshal.
>
> * * *
>
> 4. The term of office for each of the officers is two years except the office of mayor and the marshal which are four-year terms. All officers hold office until their successors are duly elected or appointed and qualified.
>
> 5. The council, by ordinance, may provide that any officer of the city except the mayor and the councilmen shall be appointed instead of elected. Such ordinance shall set the manner of appointment, in accordance with section 77.330, and the term of office for each appointive officer, which term shall not exceed four years.

The provision in subsection 4 providing that the term of the city marshal is four years was added by the General Assembly in 1989. See House Bill No. 785, 85th General Assembly, First Regular Session (1989). House Bill No. 785 was effective August 28, 1989. Prior to the 1989 amendment to Section 77.370, the term of the city marshal as provided by Section 77.370 was two years.

Section 77.370, as amended by House Bill No. 785, was in effect prior to April 3, 1990, the date of the election about

which you are concerned. Therefore, at the time of such election, Section 77.370 provided the term of the city marshal was four years. Your concerns relate to the conflict between Section 77.370 providing a four year term for the city marshal and 1) the city code providing a two year term, and 2) the ballot indicating a two year term.

Under Section 71.010, RSMo 1986, a municipal corporation's ordinance must conform to state law. Section 71.010, RSMo 1986, provides:

> 71.010. Ordinances to conform to state law.--Any municipal corporation in this state, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or authorized by some special provision of its charter, shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject. [Emphasis added.]

When considering a conflicting state statute and city ordinance, the test for determining if a true conflict exists is whether the ordinance "permits what the statute prohibits" or "prohibits what the statute permits." Page Western, Inc. v. Community Fire Protection District of St. Louis County, 636 S.W.2d 65, 67 (Mo. banc 1982). An ordinance may supplement a state law, but when the expressed or implied provisions of each are inconsistent and in irreconcilable conflict, then the statute annuls the ordinance. Id. The ordinance cannot attempt to prohibit precisely what the state regulation permits. Id. 636 S.W.2d at 68. See also Crackerneck Country Club, Inc. v. City of Independence, 522 S.W.2d 50 (Mo. App. 1974); City of Richmond Heights v. Shackelford, 446 S.W.2d 179 (Mo. App. 1969). It is well settled that a municipal ordinance must be in harmony with a general law of the state upon the same subject and is void if in conflict with the state law. Kansas City v. LaRose, 524 S.W.2d 112, 116 (Mo. banc 1975).

Based on the authorities discussed above, we conclude the four year term for the city marshal as provided in Section 77.370 prevails over any conflicting city ordinance. The amendment to Section 77.370 providing a four year term for the city marshal was effective the year before the April 3, 1990

election. The city ordinance providing a two year term is not in harmony with the state statute on the same subject and cannot prevail.

We turn next to the ballot language indicating a two year term. Sections 115.001 to 115.641, RSMo, are referred to as the "Comprehensive Election Act of 1977" (hereinafter the "Act"). See Section 115.001, RSMo 1986. Section 115.003, RSMo 1986, sets forth the purpose of the Act as follows:

> 115.003. Purpose clause.--The purpose of sections 115.001 to 115.641 and sections 51.450 and 51.460, RSMo, is to simplify, clarify and harmonize the laws governing elections. It shall be construed and applied so as to accomplish its purpose.

Section 115.005, RSMo 1986, provides:

> 115.005. Scope of act.-- Notwithstanding any other provision of law to the contrary, sections 115.001 to 115.641 shall apply to all public elections in the state, except elections for which ownership of real property is required by law for voting.

The Comprehensive Election Act of 1977 was obviously intended to give finality and conclusiveness to elections, and, to that end, accelerated judicial procedures were incorporated to govern election contests. Clark v. City of Trenton, 591 S.W.2d 257, 259 (Mo. App. 1979). Election contests did not exist and were unknown at common law, and such contests are purely statutory. Felker v. City of Sikeston, 334 S.W.2d 754, 755 (Mo. App. 1960). The right to contest an election is not a natural right, such as the right of life, liberty, and property, but exists, if at all, in the written laws of the state. Clark v. City of Trenton, 591 S.W.2d at 259 (citing Bradbury v. Wightman, 134 S.W. 511 (Mo. 1911)). The rule always has been that an election may not be contested except as specifically authorized and provided by statute. Clark v. City of Trenton, 591 S.W.2d at 259.

The ballot used in the City of Louisiana election indicated a two year term of office for the city marshal. Section 115.577, RSMo 1986, controls the time limitation in filing an election contest. Such section provides:

> 115.577. Time in which election contest may be filed.--Not later than thirty days after the official announcement of the election result by the election authority, any person authorized by section 115.553 who wishes to contest the election for any office or on any question provided in section 115.575 shall file a verified petition in the office of the clerk of the appropriate circuit court. The petition shall set forth the points on which the contestant wishes to contest the election and the facts he will prove in support of such points, and shall pray leave to produce his proof. The circuit court in which the petition is filed shall have exclusive jurisdiction over all matters relating to the contest and may issue appropriate orders to all election authorities in the area in which the contested election was held.

Section 115.553, RSMo 1986, which is cited in Section 115.577, provides:

> 115.553. Candidate may challenge returns--registered voter of area may contest result.--1. Any candidate for election to any office may challenge the correctness of the returns for the office, charging that irregularities occurred in the election.
>
> 2. The result of any election on any question may be contested by one or more registered voters from the area in which the election was held. The petitioning voter or voters shall be considered the contestant and the officer or election authority responsible for issuing the statement setting forth the result of the election shall be considered the contestee. In any such contest, the proponents and opponents of the ballot question shall have the right to engage counsel to represent and act for them in all matters involved in and pertaining to the contest.

We understand that the official announcement by the election authority of the April 3, 1990 election results occurred during April, 1990. Pursuant to Section 115.577, a petition to contest the election could have been filed within thirty days of such official announcement by a person meeting the requirements of Section 115.553. With the passage of the Act, the General Assembly mandated a procedure by which election contests could be brought. An election contest properly encompasses issues which affect the conduct and outcome of an election. Beatty v. Metropolitan St. Louis Sewer District, 700 S.W.2d 831, 838 (Mo. banc 1985). The wording of the proposition on a ballot and the propriety of the notice of election provided are issues cognizable only in an election contest. Id. Since no petition to contest the election was apparently filed within the time provided in Section 115.577, the election results are final. The erroneous indication on the ballot that the term of the city marshal would be two years has no effect.

In summary, it is the opinion of this office the person elected city marshal in April, 1990, serves a four year term pursuant to Section 77.370. The state statute, Section 77.370, providing a four term for the city marshal prevails over a conflicting city ordinance providing a two year term. Ballot language indicating a two year term has no effect since the time period to contest the election has elapsed.

CONCLUSION

It is the opinion of this office that the person elected city marshal on April 3, 1990, in a third class city subject to Section 77.370, RSMo Supp. 1990, serves a four year term as provided in Section 77.370 despite a city ordinance stating the term shall be two years and despite a phrase on the ballot indicating the term would be two years.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

CONSUMER CREDIT:
CREDIT:
CREDIT SALES:
RETAIL CREDIT SALES ACT:
RETAIL SALES:
TRUTH IN LENDING:

It is not a violation of the Missouri Retail Credit Sales Law, Sections 408.250 to 408.370, RSMo, or a violation of the Federal Truth in Lending Act for (1) a retail establishment to offer a discount in the purchase price for payment by cash versus credit, and (2) a retail establishment to not honor a discount for cash if the customer chooses to use credit.

February 26, 1991

OPINION NO. 51-91

The Honorable Thomas W. McCarthy
Senator, District 26
State Capitol Building, Room 331
Jefferson City, Missouri 65101

Dear Senator McCarthy:

This opinion is in response to your questions asking:

> Is there any violation of the Retail [Credit] Sales Act, Section 408, or the Federal Truth in Lending Act, Regulation Z, for a retail establishment to offer a discount in the purchase price because a customer agrees to pay cash versus using some form of credit as payment?
>
> A second related question is if a retail establishment honors a discount originally offered for payment by cash, when it provides credit to the customer, does this violate the Retail Credit Sales Act, Section 408, or the Federal Truth in Lending Act, Regulation Z?

You further explain your second question by stating:

> In the second example of the retail furniture store offering a discount for payment by cash, many retailers will not honor the discount once quoted should the customer change his mind and decide to

> finance the purchase through retail installment credit. They indicate to the customer that the discount is for cash purchase only.

The relevant section of the Missouri Retail Credit Sales Law, Sections 408.250 to 408.370 RSMo, is Section 408.300, RSMo 1986, which provides in part:

> 408.300. Time charges, amount authorized on retail time contracts--retail charge agreements, time charges authorized.--1. Notwithstanding the provisions of any other law, the seller or other holder under a retail time contract may charge, receive and collect a time charge, which shall be in lieu of any interest charges, except such as may arise under the terms of sections 408.250 to 408.370 after maturity of the time contract and which charge shall not exceed the following:
>
> * * *
>
> 3. The time charge shall include all charges incident to investigating and making any retail time transaction. No fee, expense, delinquency charge, collection charge, or other charge whatsoever, shall be charged, received, or collected except as provided in sections 408.250 to 408.370.

Subsection 3 of Section 408.300 quoted above forbids imposing a surcharge for credit. However, such subsection does not prohibit a discount for cash.

The relevant federal statute is 15 U.S.C. 1666f(b) which provides:

> (b) With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means not involving the use of an open-end credit plan or a credit card shall not constitute a finance charge as determined under section 1605 of this title

> if such discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously.

Subsection (b) specifically authorizes the seller to offer a discount for cash so long as the discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously. Regulation Z, 12 CFR 226, at Section 226.4(c)(8) implements the federal statute.

Furthermore, 15 U.S.C. 1666j(c) provides:

> (c) Notwithstanding any other provisions of this subchapter, any discount offered under section 1666f(b) of this title shall not be considered a finance charge or other charge for credit under the usury laws of any State or under the laws of any State relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element or elements of charges permissible under such laws in connection with the extension or use of credit.

A credit card issuer may not prohibit a retail establishment from offering discounts to customers, including cardholder customers, as an inducement to pay cash, pursuant to 12 CFR 226.12(f)(1) which provides:

> (f) Discounts; tie-in arrangements. No card issuer may, by contract or otherwise:
>
> (1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

We have found no statutory requirement that a retail establishment must honor an offer to discount for cash when the customer originally indicates they will pay cash, but subsequently chooses to use credit. Therefore, we conclude the retail establishment need not honor a discount for cash if the customer chooses to use credit.

CONCLUSION

It is the opinion of this office that it is not a violation of the Missouri Retail Credit Sales Law, Sections 408.250 to 408.370, RSMo, or a violation of the Federal Truth in Lending Act for (1) a retail establishment to offer a discount in the purchase price for payment by cash versus credit, and (2) a retail establishment to not honor a discount for cash if the customer chooses to use credit.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

August 5, 1991

OPINION LETTER NO. 53-91

The Honorable Roger B. Wilson
Senator, District 19
State Capitol Building, Room 227
Jefferson City, Missouri 65101

Dear Senator Wilson:

This opinion letter is in response to your question asking:

> The State Auditor conducted an audit of the Boone County Hospital pursuant to Section 29.230, RSMo Supp. 1990, for the year ending December 31, 1988. The hospital Board of Trustees was billed $17,792.74 for the cost of this audit by the State Auditor.
>
> Is the Board of Trustees, the County, or some other entity liable for payment of this debt?

Along with your question, you state:

> A question has arisen over payment for the audit of Boone County Hospital. The audit was requested by a petition of residents of the county in accordance with [Section 29.230, RSMo Supp. 1990]. Although [Section 29.230] specifies that the political subdivision shall pay the cost of a petition audit, the Board of Trustees of Boone County Hospital was billed for the cost.

Section 29.230, RSMo Supp. 1990, provides in pertinent part as follows:

> 29.230. To audit county offices, when--political subdivisions by petition, requirements, costs--petition audit revolving trust fund created, administration.
>
> * * *
>
> 2. The state auditor shall audit any political subdivision of the state, including counties having a county auditor, if requested to do so by a petition signed by the requisite percent of the qualified voters of the political subdivision determined on the basis of the votes cast for the office of governor in the last election held prior to the filing of the petition. . . .
>
> * * *
>
> (4) . . . The political subdivision shall pay the actual cost of audit. . . .

In Attorney General Opinion No. 224, Lehr, 1975, a copy of which is enclosed, we stated:

> The Supreme Court of Missouri has characterized a county hospital as a "county entity," and an "instrumentality of the county," and a "creature" of the county. Fulton National Bank v. Callaway Memorial Hospital, 465 S.W.2d 549, 551-552 (Mo. 1971). Furthermore, the court has considered the members of the board of trustees of county hospitals as "public officials" of the county. State ex rel. Holman v. Trimble, 293 S.W.2d 98, 102 (Mo.Banc 1927).

Id., p. 2. In such opinion this office concluded that the State Auditor is obligated to include county hospitals within the scope of the audit of counties containing a county hospital. See also Attorney General Opinion Letter No. 174, Sharp, 1979 (county hospital is neither a political subdivision nor . . .), Attorney General Opinion No. 113-83 (county hospitals are instrumentalities of the counties, not separate political subdivisions . . .), and Attorney General Opinion No.

107-87 (county hospital does not meet the definition of a political subdivision), copies of which are enclosed.

Based on the foregoing, we conclude that the county hospital is not a separate political subdivision. Therefore, it is the opinion of this office that the cost of the audit of Boone County Hospital should be paid by the county, the political subdivision.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 224, Lehr, 1975
Opinion Letter No. 174, Sharp, 1979
Opinion No. 113-83
Opinion No. 107-87

ATTORNEY GENERAL OF MISSOURI

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P. O. Box 899
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May 16, 1991

OPINION LETTER NO. 55-91

Richard G. Callahan
Cole County Prosecuting Attorney
301 East High Street
Jefferson City, Missouri 65101

Dear Mr. Callahan:

This opinion letter is in response to your questions asking:

> [W]hether the salary figure for county officials in Cole County for the 1991-1994 elected terms should be based on the figures set forth in the chart for those counties with an assessed valuation between three hundred and four hundred million dollars or should the salaries be based on the figures set forth in the chart for counties with an assessed valuation between four hundred and five hundred million dollars; and
>
> Should the eight percent increase [voted by the salary commission in November of 1989 to be awarded to elected officials] be applied to the salary schedule for counties with an assessed valuation between three hundred and four hundred million dollars or should the eight percent increase be applied to the salary schedule for counties with an assessed valuation between four hundred and five hundred million dollars?

Along with your questions, you state that the salary charts in the Revised Statutes of Missouri provide for salaries for the county auditor, clerk, collector, commissioner, prosecutor and recorder depending on the assessed valuation of the county. You further state:

> At the meeting of the Cole County Salary Commission in the fall of 1987, the

> Commission voted to receive the full compensation provided for by law. For the calendar year 1987, Cole County had an assessed valuation of just under four hundred million dollars, and consequently the County salaries for the 1987-1990 elected terms were based on an assessed valuation between three hundred and four hundred million dollars. In the calendar year 1988 and thereafter, the assessed valuation of property in Cole County has increased to a figure between four hundred and five hundred million dollars.

Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 65, 133, 178, 216 and 231, 84th General Assembly, First Regular Session (1987), as amended by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 431, 84th General Assembly, Second Regular Session (1988), and further amended by House Committee Substitute for Senate Bill No. 525, 85th General Assembly, Second Regular Session (1990) and Senate Bill No. 580, 85th General Assembly, Second Regular Session (1990) established a county salary commission for all nonchartered counties. As codified, Section 50.333, RSMo Supp. 1990, provides in pertinent part:

> 50.333. Salary commission, duties of clerk, notice of meetings, members, duties, meetings, report, form, failure to meet, effect of--mileage allowance--"total compensation allowable", defined (noncharter counties).--1. There shall be a salary commission in every nonchartered county.
>
> * * *
>
> 7. For the year 1989 and every second year thereafter, the salary commission shall meet in every county as many times as it deems necessary on or prior to November thirtieth of any such year for the purpose of determining the amount of compensation to be paid to county officials.
>
> * * *
>
> The salary commission shall then consider the compensation to be paid for the next

> term of office for each county officer to be elected at the next general election; . . . . If the commission votes not to increase or decrease the compensation, the salary being paid during the term in which the vote was taken shall continue as the salary of such offices and officers during the subsequent term of office. If the salary commission votes to increase the compensation, all officers or offices, except as otherwise provided in this subsection for county commissioners, whose compensation is being considered by the commission at that time, shall receive the same percentage of the difference between the maximum allowable compensation and the compensation being paid during the term of office when the vote is taken. However, for any county in which all officers are receiving one hundred percent of the maximum allowable compensation, the commission may vote to increase the compensation of county officers without regard to any law or maximum limitation previously established by law. Such increase shall be expressed as a percentage of the compensation being paid during the term of office when the vote is taken, and each officer whose compensation is being established by the salary commission at that time shall receive the same percentage increase over the compensation being paid for that office during the term when the vote is taken. . . .
>
> * * *

In Attorney General Opinion Letter No. 54-89, a copy of which is enclosed, we considered the question of which year's assessed valuation applies to computing compensation for county officers. We stated:

> In setting the compensation of county officials, the statutes frequently provide for a part of the compensation to be based on the assessed valuation of the county. As an example, Section 49.082, RSMo Supp. 1988, as enacted by Senate Bill No. 431, provides a part of the compensation of a county commissioner in certain counties shall be based on a schedule as set forth

> in the section. . . In determining which year's assessed valuation applies to computing the compensation of the county commissioner, Section 49.082 states: "The population factor shall be . . . and the assessed valuation factor shall be the amount thereof as shown for the year next preceding the computation." [Emphasis added.] Similar language in other statutes relates to computing the compensation of other county officials.

Opinion Letter No. 54-89, pages 1-2.

We further stated:

> Determining the "computation" to which the statutes refer is therefore important because if the year is fixed by the county salary commission's computation, compensation does not change between county salary commission meetings. However, if compensation is determined by computation by the payroll clerk, compensation of county officials varies according to fluctuating assessments for counties from year to year.

Id., pages 2-3.

We concluded that the phrase "for the year next preceding the computation" in Senate Bill No. 431 "refers to the computation made by the county salary commission. In the foregoing example involving the compensation of the county commissioner, the 1989 compensation of the county commissioner would be based on the 1987 assessed valuation. . . ." Id., page 3.

We believe Opinion Letter No. 54-89 answers your first question in that the assessed valuation to be used would be the assessed valuation in existence in "the year next preceding the computation". The computation occurred at the salary commission meeting in 1989. You have stated that the assessed valuation of Cole County increased to between four hundred and five hundred million dollars commencing in 1988. Therefore, the assessed valuation of between four hundred and five hundred million dollars should be used in computing salaries for 1991-1994.

Your second question asks whether an eight percent increase voted by the county salary commission in November of 1989 should be applied to the salary schedule for counties with an assessed

valuation between three hundred and four hundred million dollars or should be applied to the salary schedule for counties with an assessed valuation between four hundred and five hundred million dollars. The salary schedule in effect in November of 1989 at the time of the county salary commission meeting voting the salary increase was the salary schedule for counties with an assessed valuation between three hundred and four hundred million dollars. The applicable provision in Section 50.333.7, RSMo Supp. 1990, states that the "increase shall be expressed as a percentage of the compensation being paid during the term of office when the vote is taken, and each officer whose compensation is being established by the salary commission at that time shall receive the same percentage increase over the compensation being paid for that office during the term when the vote is taken." [Emphasis added.] The legislature is presumed to have intended what the statute says, and if the language is clear and unambiguous, there is no room for construction. State v. Evers, 777 S.W.2d 344, 345 (Mo. App. 1989). The applicable statutory provision states that the increase shall be expressed as a percentage of the compensation being paid during the term of office when the vote is taken. The vote was taken in November of 1989 when the compensation being paid was based on the salary schedule for counties with an assessed valuation between three hundred and four hundred million dollars. Therefore, the eight percent increase to which you refer in your question should be applied to the salary schedule for counties with an assessed valuation between three hundred and four hundred million dollars.

In summary, the county officials in Cole County listed in your question for the 1991-1994 elected terms will have their salary based on the figures set forth in the chart for those counties with an assessed valuation between four hundred and five hundred million dollars and will receive an additional amount based on eight percent of the salary schedule for counties with an assessed valuation between three hundred and four hundred million dollars.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 54-89

AMBULANCES:
AMBULANCE DISTRICTS:
COUNTIES:
EMERGENCIES:
EMERGENCY VEHICLES:
FIRE PROTECTION DISTRICTS:
POLICE:

Under Sections 321.243 and 321.245, RSMo Supp. 1990, it is legally permissible for a central dispatching center to provide for the dispatching of ambulances, whether such ambulances are operated by a fire protection district or an ambulance district, and for the dispatching for law enforcement departments.

July 24, 1991

OPINION NO. 57-91

The Honorable Steve Ehlmann
Representative, District 19
State Capitol Building, Room 201E
Jefferson City, Missouri 65101

Dear Representative Ehlmann:

This opinion is in response to your questions asking:

> Assuming a central dispatching center meets the minimum equipment and personnel requirements of Section 321.245, RSMo, and receives funds pursuant to Sections 321.243 and 321.245, RSMo, which of the following are proper expenditures:
>
> 1. For the dispatching of ambulances? Does it matter whether they are operated by a fire district or an ambulance district?
>
> 2. For the dispatching of law enforcement departments?

It is our understanding your questions relate to the approval by the voters of St. Charles County of a tax to provide joint, central fire and emergency dispatching service.

The pertinent statutes are Section 321.243, RSMo Supp. 1990, and Section 321.245, RSMo Supp. 1990. Section 321.243 provides:

> 321.243. Tax authorized for dispatching center--requirements--funds, payment from.--1. Notwithstanding any other provision of law, an additional tax of not to exceed three cents per one hundred dollars of assessed valuation may be levied and collected by any city, town, village, county, or fire protection district, but all the funds derived from such tax shall be used solely for the purpose of providing a joint, central fire and emergency dispatching service.
>
> 2. The additional tax prescribed by this section shall be levied only when the governing body of the city, town, village, county, or fire protection district determines that a central fire and emergency dispatching center is available, that the center meets the minimum requirements set by section 321.245, and when the governing body has entered into a contract with the center for fire and emergency dispatching services. The funds from the tax shall be kept separate and apart from all other funds of the city, town, village, county, or fire protection district, and shall be paid out only on order of the governing body.
>
> 3. In addition to the tax prescribed by subsections 1 and 2 of this section, an additional tax of not to exceed two cents per one hundred dollars of assessed valuation which has been approved by the voters may be levied and collected by any city, town, village, county, or fire protection district, but all of the funds derived from such tax shall be used solely for the purpose of providing a joint, central fire and emergency dispatching service.

Section 321.245 provides:

321.245. Personnel and equipment required for dispatching center.--1. No central dispatching center shall qualify to receive any funds collected pursuant to section 321.243 and this section unless it meets the following minimum equipment and personnel requirements:

(1) Two separate transmitters and receivers capable of operating on all working fire radio frequencies included in the area to be covered, together with monitor receivers for police frequencies, point-to-point police or local police dispatchers operating on a twenty-four hour basis, plus an emergency power source capable of operating all equipment and lights necessary for dispatching for an indefinite period of time;

(2) Duo-multichannel recording equipment for all radio frequencies and telephone trunk "hot lines", complete with automatic transfer on failure of logging recorder and automatic time inserted on recorder and with instant playback on any channel at dispatcher's position without interruption of regular log recorder;

(3) A minimum of three trunk telephone lines designated as "hot lines" in reserve for "fire or emergency" calls only, plus such other lines as may be necessary to conduct the normal business of the center which may also be used for fire or emergency purposes;

(4) A chief dispatcher to be in charge of operations, who shall be directly responsible to the management of the dispatching service;

(5) Sufficient senior dispatchers to provide twenty-four hour attendance at the center;

(6) Such assistant dispatchers as may be necessary to provide two-man switchboard operation during certain hours as

prescribed in section 321.243 and this section;

(7) Alarm circuits to engine houses from dispatching center shall be two of the following type systems: wired circuit or by telephone line; radio circuit or by tone signaling; or microwave radio circuit; so that upon failure of either circuit the other will operate independently, and both circuits must be capable of sounding alarm at any engine house;

(8) Radio alarm equipment at each engine house capable of operating without local utility power for a period of at least eight hours; and

(9) Radio equipment on all fire vehicles which answer alarms which will provide two-way voice communication between the equipment and the dispatching center.

2. A minimum of two dispatchers shall be on duty at all times in any central dispatching center between the hours of 7:00 a.m. and 11:00 p.m. If only one dispatcher is on duty at other times, a twenty-minute watchman's check shall be maintained.

3. All dispatchers shall be at least eighteen years of age. They shall devote their full time to this occupation. Each dispatcher must be capable of operating all equipment used in the dispatching center.

4. Each dispatching center shall employ sufficient personnel to insure that no person will be required to be on duty without at least twelve hours between shifts.

Your first question asks whether or not a central dispatching center may provide for the dispatch of ambulances. Section 321.243.1 specifically states that any funds from the additional tax can only be used for the purpose of providing a joint, central fire and emergency dispatching service. The term "emergency dispatching service" is not defined in Section

321.243. Words used in a statute are to be considered in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). The term "emergency" is defined in Webster's New World Dictionary, Second College Edition, as: "a sudden, generally unexpected occurrence or set of circumstances demanding immediate action." An ambulance would customarily be dispatched in response to certain emergencies. Since the permissible purposes of the central dispatching center include "emergency dispatching" and ambulances are customarily dispatched in response to certain emergencies, we conclude the dispatching of ambulances is a legally permissible service to be provided by a central dispatching center.

In addition, the presumption is that the legislature did not intend for any part of a statute to be without meaning or effect. Stiffelman v. Abrams, 655 S.W.2d 522, 531 (Mo. banc 1983). By including "and emergency" within the phrase "fire and emergency dispatching services," presumably the legislature intended the central dispatching center to be permitted to dispatch more than just in response to fires. [Emphasis added.] Otherwise, "and emergency" would be without meaning or effect.

The tax about which you are concerned we understand was adopted by the voters of St. Charles County. Section 321.243 was amended in 1988 to permit a county to enact such a tax. See House Committee Substitute for Senate Bill No. 725, 84th General Assembly, Second Regular Session (1988). Under subsection 2 of Section 321.243, the additional tax is "for fire and emergency dispatching services." There is no statutory restriction which limits the dispatching of ambulances to only those operated by a fire protection district or only those operated by an ambulance district. Therefore, we conclude that the dispatching of ambulances, whether operated by a fire protection district or an ambulance district, is a legally permissible service to be provided by the central dispatching center.

Your final question asks whether or not a central dispatching center may provide for the dispatching for law enforcement departments. Just as ambulances are dispatched in response to certain emergencies, law enforcement departments respond to certain emergencies. For the same reasons discussed previously with regard to ambulances, we conclude the dispatching for law enforcement departments is a legally permissible service to be provided by a central dispatching center.

CONCLUSION

It is the opinion of this office that under Sections 321.243 and 321.245, RSMo Supp. 1990, it is legally permissible for a central dispatching center to provide for the dispatching of ambulances, whether such ambulances are operated by a fire protection district or an ambulance district, and for the dispatching for law enforcement departments.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

CITIES, TOWNS AND VILLAGES: The City of St. Peters is not
CITY PROPERTY: required under Chapter 311,
LIQUOR: RSMo, to obtain a liquor license for its public meeting rooms which are available for events where alcoholic beverages may be served by individuals or groups other than the city at no charge to the consumer or where alcoholic beverages may be sold as part of a fundraising activity held by individuals or groups other than the city.

April 30, 1991

OPINION NO. 58-91

The Honorable Joseph R. Ortwerth
Representative, District 18
State Capitol Building, Room 101 E
Jefferson City, Missouri 65101

Dear Representative Ortwerth:

This opinion is in response to your questions asking:

> Whether the City of St. Peters is required to obtain a liquor license for its public meeting rooms which are available for events where alcoholic beverages may be served by individuals or groups other than the City at no charge to the consumer of such beverage.
>
> Whether the City of St. Peters is required to obtain a liquor license for its public meeting rooms which are available for events where alcoholic beverages may be served as part of a fundraising activity held by individuals or groups other than the City when the City will not be serving or selling such alcoholic beverages.

In the statement of facts accompanying your questions, you relate:

> The City of St. Peters has just opened its new City Centre and Recreational Complex. The new city hall has several meeting rooms which are available for use by the public.

> It has come to the city's attention that certain functions planned at city hall such as wedding receptions and fundraisers may have alcoholic beverages available for the guests who attend such events. . . . The City of St. Peters does not intend to sell liquor in any manner at the City Hall Complex. . . .

Chapter 311, RSMo, is known as the "Liquor Control Law." Section 311.040, RSMo 1986, provides:

> 311.040. Application of law.--The provisions of this law shall be in force in and apply to every incorporated city, town or village in this state, whether same be organized under the general law relating to cities, towns and villages, or by special charter under the state constitution, any ordinance or charter provision of any city, town or village to the contrary notwithstanding.

Section 311.050, RSMo 1986, prohibits the sale of intoxicating liquor without a license:

> 311.050. License required.--It shall be unlawful for any person, firm, partnership or corporation to manufacture, sell or expose for sale in this state intoxicating liquor, as defined in section 311.020, in any quantity, without taking out a license.

Your first question specifically refers to events where alcoholic beverages are to be served "at no charge to the consumer of such beverage." We find no provisions within the Liquor Control Law requiring an entity to obtain a liquor license for distribution of alcoholic beverages at no charge to the consumer.

Therefore, we conclude that the City of St. Peters is not required to obtain a liquor license for its public meeting rooms if they are to be used for events where alcoholic beverages may be served by individuals or groups other than the city at no charge to the consumer of such beverages.

Your second question refers to events "where alcoholic beverages may be served as part of a fundraising activity" when

the city itself is not serving or selling alcoholic beverages. We assume that this question includes events where individuals or groups using the city's facilities may offer alcoholic beverages for sale.

Section 311.050, RSMo 1986, prohibits any person or entity as listed in the section from selling liquor without a license. Because the City of St. Peters would not be the entity selling liquor, we conclude the City of St. Peters is not required to obtain a liquor license for the situations described in your second question.

CONCLUSION

It is the opinion of this office that the City of St. Peters is not required under Chapter 311, RSMo, to obtain a liquor license for its public meeting rooms which are available for events where alcoholic beverages may be served by individuals or groups other than the city at no charge to the consumer or where alcoholic beverages may be sold as part of a fundraising activity held by individuals or groups other than the city.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

CITIES, TOWNS AND VILLAGES:
LIQUOR:
VILLAGES:

The term "incorporated city" as used in Section 311.090, RSMo Supp. 1990, includes incorporated villages.

May 28, 1991

OPINION NO. 59-91

The Honorable Craig Kilby
Representative, District 21
State Capitol Building, Room 105G
Jefferson City, Missouri 65101

Dear Representative Kilby:

This opinion is in response to your question asking:

> Do villages fall within the meaning of "incorporated city" as used in Section 311.090?

Section 311.090, RSMo Supp. 1990, provides in part:

> 311.090. Sale of liquor by the drink, cities, requirements--Sunday sales authorized for certain organizations.--1. Any person who possesses the qualifications required by this chapter, and who meets the requirements of and complies with the provisions of this chapter, and the ordinances, rules and regulations of the incorporated city in which such licensee proposes to operate his business, may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as in this chapter defined, by the drink at retail for consumption on the premises described in the application; provided, that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five percent by weight, and light wines containing not in excess of fourteen percent of alcohol by weight made exclusively from grapes, berries and other fruits and vegetables, by the drink at

> retail for consumption on the premises where sold to any person other than a charitable, fraternal, religious, service or veterans' organization which has obtained an exemption from the payment of federal income taxes as provided in section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(7), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the United States Internal Revenue Code of 1954, as amended, in any incorporated city having a population of less than twenty thousand inhabitants, until the sale of such intoxicating liquor, by the drink at retail for consumption on the premises where sold, shall have been authorized by a vote of the majority of the qualified voters of the city. Such authority shall be determined by an election to be held in those cities having a population of less than twenty thousand inhabitants as determined by the last preceding federal decennial census, under the provisions and methods set out in this chapter. No license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five percent by weight, by the drink at retail for consumption on the premises where sold, outside the limits of such incorporated cities unless the licensee is a charitable, fraternal, religious, service or veterans' organization which has obtained an exemption from the payment of federal income taxes as provided in section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(7), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the United States Internal Revenue Code of 1954, as amended. [Emphasis added.]

* * *

Prior to the enactment of House Committee Substitute for House Bills Nos. 85, 103, 380, 421 and 439, Eighty-second General Assembly, First Regular Session (1983), Section 311.090, RSMo, included language defining "city" as "any municipal corporation having a population of five hundred inhabitants or more." The amendment deleting this language removed the

requirement that a city have a population of five hundred inhabitants or more. See Attorney General Opinion No. 33-90, a copy of which is enclosed.

In two prior opinions from this office, we have examined the meaning of the word "city" in the absence of any special or technical definition. In Attorney General Opinion No. 22, Detjen, April 21, 1953, a copy of which is enclosed, we concluded that the term "incorporated cities" found in Article VI, Section 18(c) of the Constitution of Missouri includes all incorporated cities, towns and villages.

In Attorney General Opinion No. 193, Hickey, July 13, 1962, a copy of which is enclosed, we concluded the word "city" as used in Article VI, Section 19 of the Constitution of Missouri includes towns and villages. Article VI, Section 19 of the Constitution of Missouri at the time of the opinion provided in part:

> Any city having more than 10,000 inhabitants may frame and adopt a charter for its own government, consistent with and subject to the Constitution and laws of the state. . . .

In Opinion No. 193, supra, we stated:

> There is no indication that the framers of the Constitution of Missouri in the writing of Section 19, Article VI, intended to use the word "city" in any technical sense or to give it a special or unusual meaning. It was intended rather to refer to any municipality "having more than 10,000 inhabitants" . . . .

Id. at 2.

Based on these past opinions, we conclude that the phrase "incorporated city" as used in Section 311.090, RSMo Supp. 1990, includes incorporated villages.

CONCLUSION

It is the opinion of this office that the term "incorporated city" as used in Section 311.090, RSMo Supp. 1990, includes incorporated villages.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 33-90
Opinion No. 22, Detjen, April 21, 1953
Opinion No. 193, Hickey, July 13, 1962

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

April 17, 1991

OPINION LETTER NO. 61-91

Richard G. Callahan
Cole County Prosecuting Attorney
301 East High Street
Jefferson City, Missouri 65101

Dear Mr. Callahan:

This opinion letter is in response to your question regarding the interaction of Sections 56.066 and 56.265, RSMo Supp. 1990, and their applicability to the salary for the office of Cole County Prosecuting Attorney for the term 1991-1994. We understand Cole County is a second class county which contains facilities which are operated by the Department of Corrections with a total average yearly inmate population in excess of three thousand persons. We further understand the Cole County Prosecuting Attorney commenced a new term of office in January 1991.

Section 56.265, RSMo Supp. 1990, sets out the schedule for computing the annual salary for prosecutors depending upon the classification of the county they serve and whether they are full-time or part-time prosecutors. The schedule is based upon assessed valuation for the county and population of the county. Along with your question, you state that for purposes of the question you are "assuming that the base salary for [Cole County] prosecuting attorney is $47,000 ($43,000 for assessed valuation and $4,000 for population)."

Section 56.265.1(2), RSMo Supp. 1990, also provides in part as follows:

> In second class counties which contain facilities which are operated by the department of corrections with a total average yearly inmate population in excess of two thousand persons, the prosecuting attorney shall receive thirteen thousand

> dollars per annum in addition to all other compensation provided by law, however, the total annual compensation of such prosecuting attorney holding office on January 1, 1988, shall not be increased by more than nine thousand dollars above the compensation which he is receiving on January 1, 1988, during the term of office he is serving at that time.

Your question addresses a relationship between the preceding paragraph and Section 56.066.2, RSMo Supp. 1990, which provides as follows:

> 2. In second class counties which contain facilities which are operated by the department of corrections with a total average yearly inmate population in excess of one thousand persons, the prosecuting attorney shall receive thirteen thousand dollars per annum in addition to all other compensation provided by law. In second class counties which contain facilities which are operated by the department of corrections with a total average yearly inmate population in excess of three thousand persons, the prosecuting attorney shall receive thirteen thousand dollars per annum in addition to all other compensation provided by law. The compensation provided in connection with the average inmate population shall not be considered for purposes of determining any increase in compensation from January 1, 1988.

Sections 56.066 and 56.265, RSMo, were both adopted as part of Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 65, 133, 178, 216 and 231, 84th General Assembly, First Regular Session (1987) [hereinafter sometimes referred to as Senate Bill No. 65]. Senate Bill No. 65 was enacted as a comprehensive law covering salaries of county officials. In the following legislative session in 1988, the provisions enacted as part of Senate Bill No. 65 were substantially amended by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 431, 84th General Assembly, Second Regular Session (1988). However, the provisions pertinent to your

question have not been changed since they were enacted as part of Senate Bill No. 65.

It is helpful to review the progress of the bill that was eventually enacted by the General Assembly in 1987 as Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 65, 133, 178, 216 and 231. Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 65, 133, 178, 216 and 231 contained the reference to additional compensation for prosecuting attorneys based on inmate population. This Senate Substitute contained the following language on page 30, lines 51-66, as part of the section eventually numbered 56.265:

> In second class counties which contain facilities which are operated by the Department of Corrections and Human Resources with a total average yearly inmate population in excess of one thousand persons, the prosecuting attorney shall receive $8,000 per annum in addition to all other compensation provided by law.
>
> In second class counties which contain facilities which are operated by the Department of Corrections and Human Resources with a total average yearly inmate population in excess of three thousand persons, the prosecuting attorney shall receive thirteen thousand dollars per annum in addition to all other compensation provided by law. The compensation provided in connection with the average inmate population shall not be considered for purposes of determining any increase in compensation from the effective date of Section 3 of this act.

In House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 65, 133, 178, 216 and 231, Section 56.066.2 was set out as it now appears in the Revised Statutes of Missouri providing thirteen thousand dollars per annum for prosecuting attorneys in second class counties where the Department of Corrections maintains facilities with a total average yearly inmate population in excess of one thousand persons as well as such counties with a total average yearly inmate population in excess of three thousand persons. House Committee Substitute at page 7, lines 15-27 and page 8, lines 28-30. The section in the House Committee Substitute eventually

numbered 56.265 no longer contained the provisions relating to additional compensation for prosecuting attorneys based on inmate population. In the Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 65, 133, 178, 216 and 231, which was truly agreed to and finally passed, the language now contained in Section 56.265 relating to additional compensation for prosecuting attorneys in second class counties where the Department of Corrections maintains facilities with a total average yearly inmate population in excess of two thousand persons appeared; however, Section 56.066.2 remained as set out in the House Committee Substitute.

When construing statutes, it is necessary to ascertain the legislature's intent in enacting the measure and to give effect to the plain language of the statute viewed as a whole. A. B. v. Frank, 657 S.W.2d 625, 628 (Mo. banc 1983). Statutes relating to the same subject are to be considered together and harmonized if possible so as to give meaning to all provisions of each. State ex rel. LeBeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985). Although Section 56.265.1(2), RSMo Supp. 1990, refers to a total average yearly inmate population in excess of two thousand persons and Section 56.066.2, RSMo Supp. 1990, refers to a total average yearly inmate population in excess of one thousand and three thousand persons, each section would apply to Cole County. Based on the language of the statutes, we conclude that the thirteen thousand dollars per annum set forth in Section 56.265.1(2), RSMo Supp. 1990, takes effect for the term 1991-1994 in addition to the salary schedule of Section 56.265.1(2), RSMo Supp. 1990, and the thirteen thousand dollars per annum of Section 56.066.2, RSMo Supp. 1990. Both Sections 56.066.2 and 56.265.1(2), RSMo Supp. 1990, state that the thirteen thousand dollars per annum compensation provided in each section is "in addition to all other compensation provided by law." The legislature is presumed to have intended what the statute says. State v. Evers, 777 S.W.2d 344 (Mo. App. 1989).

In reaching this decision, we are not unmindful of the rule that statutes providing compensation for an officer are strictly construed against the officer. Becker v. St. Francois County, 421 S.W.2d 779, 783 (Mo. 1967). "It is well established, however, that the presumption is that the legislature did not intend for any part of a statute to be without meaning or effect." Stiffelman v. Abrams, 655 S.W.2d 522, 531 (Mo. banc 1983). The legislature has specifically provided thirteen thousand dollars per annum of additional compensation in Section 56.066.2, RSMo Supp. 1990, and thirteen thousand dollars per annum of additional compensation in Section 56.265.1(2), RSMo

Supp. 1990, for the county prosecuting attorney in counties such as Cole County and specifically stated that each thirteen thousand dollars per annum of additional compensation is in addition to all other compensation provided by law.

Based on the specific language of the statutes, it is the opinion of this office that the Cole County Prosecuting Attorney is entitled to the thirteen thousand dollars per annum set forth in Section 56.265.1(2), RSMo Supp. 1990, in addition to the compensation provided by the salary schedule of Section 56.265.1(2), RSMo Supp. 1990, and the thirteen thousand dollars per annum of Section 56.066.2, RSMo Supp. 1990.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

July 11, 1991

OPINION LETTER NO. 65-91

The Honorable Margaret Kelly, CPA
Missouri State Auditor
301 West High, Room 880
Jefferson City, Missouri 65101

Dear Mrs. Kelly:

This opinion letter is in response to your questions asking:

1) What is the maximum rate of mileage reimbursement that can be legally paid to the county sheriff and deputies when personal automobiles are utilized in civil law enforcement activities?

2) What is the maximum rate of mileage reimbursement that can be legally paid to the county sheriff and deputies when personal automobiles are utilized in criminal law enforcement activities (including prisoner transportation)?

3) Is the mileage reimbursement of county officers and employees (other than the sheriff and deputies) affected by the amendment of § 57.350, RSMo, H.B. 1525, Laws 1990, specifically increasing the civil law enforcement mileage reimbursement? (This question involves analyzing the effect of § 50.333.11, RSMo Supp. 1989.)

4) In view of the provisions of Article X, § 21 of the Constitution of Missouri, may a county be compelled to reimburse mileage expense at an

increased level absent a state appropriation to pay the same?

We presume your questions relate to third class counties which are audited by your office. Your questions require review of several statutes relating to reimbursement of county officers and, specifically, county sheriffs.

Sections 57.350, RSMo Supp. 1990, and 57.430, RSMo 1986, are statutes specifically addressing mileage reimbursement to county sheriffs and deputies. Section 57.350, RSMo Supp. 1990, provides for mileage reimbursement for duties in civil cases and states as follows:

> 57.350. Mileage expenses allowed.--1. The sheriff may, in an emergency or when he deems it essential for the performance of the official duties of his office, permit the use of personally owned motor vehicles by members of his department, but only when no county owned vehicles are available. When such use is authorized, members of the department using their own motor vehicles shall be reimbursed out of the county treasury twenty-five cents for each mile actually and necessarily traveled in the performance of their official duties as prescribed by subsection 2 of this section. [Emphasis added.]

* * *

This section was amended in 1990 by House Bill No. 1525, 85th General Assembly, Second Regular Session (1990) to increase the mileage reimbursement from twenty cents to twenty-five cents per mile.

Section 57.430, RSMo 1986, provides for mileage reimbursement for county sheriffs for duties in criminal cases.[1]

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[1]Section 57.430, RSMo 1986, has been amended by Senate Bill No. 250, 86th General Assembly, First Regular Session (1991). Senate Bill No. 250 increases the maximum mileage reimbursement (Footnote Continued)

> 57.430. Mileage--maximum amount--computed how--statement to be filed, contents (third and fourth class counties).--1. In addition to the salary provided in sections 57.390 and 57.400, the county commission shall allow the sheriffs and their deputies, payable at the end of each month out of the county treasury, actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed twenty cents per mile, and actual expenses not to exceed twenty cents per mile for each mile traveled, the maximum amount allowable to be four hundred dollars during any one calendar month in the performance of their official duties in connection with the investigation of persons accused of or convicted of a criminal offense. The county commission may allow an additional two hundred dollars during any one calendar month for these same official duties. When mileage is allowed, it shall be computed from the place where court is usually held, and when court is usually held at one or more places, such mileage shall be computed from the place from which the sheriff or deputy sheriff travels in performing any service. When two or more persons who are summoned, subpoenaed, or served with any process, writ, or notice, in the same action, live in the same general direction, mileage shall be allowed only for summoning, subpoenaing or serving of the most remote. [Emphasis added.]
>
> * * *

Sections 33.095, RSMo 1986, and 50.333.11, RSMo Supp. 1990, pertain to mileage reimbursement for county officers and employees.

(Footnote Continued)
for county sheriffs and deputies for duties in criminal cases from twenty cents to twenty-five cents per mile. The bill is effective August 28, 1991.

33.095. Mileage allowance, employees of state and certain counties.--Other provisions of law notwithstanding, in every instance where an officer or employee of the state or any county, except first class counties with a charter form of government, is paid a mileage allowance or reimbursement, the allowance or reimbursement shall be computed at the rate of ten cents per mile unless a higher rate is specifically authorized by statute or order of the commissioner of administration.

50.333. Salary commission, duties of clerk, notice of meetings, members, duties, meetings, report, form, failure to meet, effect of--mileage allowance--"total compensation allowable", defined (noncharter counties).

* * *

11. Other provisions of law notwithstanding, in every instance where an officer or employee of any county is paid a mileage allowance or reimbursement, the county commission shall allow or reimburse such officers or employees out of the county treasury at the highest rate paid to any county officer for each mile actually and necessarily traveled in the performance of their official duties. The county commission of any county may elect to pay a mileage allowance for any county commissioner for travel going to and returning from the place of holding commission meetings and for all other necessary travel on official county business in the personal motor vehicle of the commissioner presenting the claim. The mileage compensation shall be paid at the end of each month on presentation of a bill by the county commissioner presenting the claim setting forth the number of miles necessarily traveled. [Emphasis added.]

* * *

Subsection 11 of Section 50.333, RSMo, was first enacted by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 431, 84th General Assembly, Second Regular Session (1988). In 1990, Section 50.333, RSMo, was repealed and reenacted by House Committee Substitute for Senate Bill No. 525 and by Senate Bill No. 580, 85th General Assembly, Second Regular Session (1990). Subsection 11 of Section 50.333, RSMo, was not changed by the 1990 repeal and reenactment.

In the context of this background, we address your specific questions:

> 1) What is the maximum rate of mileage reimbursement that can be legally paid to the county sheriff and deputies when personal automobiles are utilized in civil law enforcement activities?

Pursuant to Section 57.350, RSMo Supp. 1990, "members of the [county sheriff's] department using their own motor vehicles shall be reimbursed out of the county treasury twenty-five cents for each mile actually and necessarily traveled in the performance of their official duties."

> 2) What is the maximum rate of mileage reimbursement that can be legally paid to the county sheriff and deputies when personal automobiles are utilized in criminal law enforcement activities (including prisoner transportation)?

Section 57.430, RSMo 1986, provides for mileage reimbursement of not to exceed twenty cents per mile for sheriffs and their deputies for duties in criminal cases. However, it is necessary to consider also Sections 50.333.11 and 57.350, RSMo Supp. 1990.

Section 50.333.11, RSMo Supp. 1990, provides in pertinent part: "[o]ther provisions of law notwithstanding, in every instance where an officer or employee of any county is paid a mileage allowance or reimbursement, the county commission shall allow or reimburse such officers or employees out of the county treasury at the highest rate paid to any county officer. . . ." [Emphasis added.] The term "notwithstanding" has been held to mean "in spite of" or "regardless of". Missouri Pacific Railroad Company v. Rental Storage & Transit Company, 524 S.W.2d 898, 908 (Mo. App. 1975). The word "every" is all comprehensive. State ex rel. Randolph County v. Walden, 357

Mo. 167, 206 S.W.2d 979, 983 (banc 1947). Therefore, mileage for sheriffs and their deputies for duties relating to criminal cases should be reimbursed "at the highest rate paid to any county officer."

Section 33.095, RSMo 1986, represents an earlier attempt to bring uniformity to mileage reimbursement by requiring all reimbursement for county officers and employees -- with the exception of first class counties with a charter form of government -- to "be computed at the rate of ten cents per mile unless a higher rate is specifically authorized by statute or order of the commissioner of administration." We note that the current maximum rate of mileage reimbursement established by the commissioner of administration is twenty and one-half cents per mile. See 1 CSR 10-11.020. With the enactment of the amendment to Section 57.350, RSMo Supp. 1990, twenty-five cents per mile is now the maximum rate paid to any county officer or employee for mileage reimbursement.

In considering all of these statutes together, we believe the provision of Section 50.333.11, RSMo Supp. 1990, that the highest rate paid to any county officer should be the rate for all county officers and employees prevails over the twenty cent rate provided in Section 57.430, RSMo 1986. Therefore, the maximum rate of mileage reimbursement that can be legally paid to the county sheriff and deputies when personal automobiles are used in criminal law enforcement activities is twenty-five cents per mile.

> 3) Is the mileage reimbursement of county officers and employees (other than the sheriff and deputies) affected by the amendment of § 57.350, RSMo, H.B. 1525, Laws 1990, specifically increasing the civil law enforcement mileage reimbursement?

Based on our discussion in response to your second question, we conclude that the amendment to Section 57.350, RSMo Supp. 1990, increasing the mileage reimbursement for county sheriffs and their deputies to twenty-five cents per mile, when harmonized with Section 50.333.11, RSMo Supp. 1990, results in mileage reimbursement for other county officers and employees at a rate of twenty-five cents per mile. This rate prevails over the rate of twenty and one-half cents per mile established by Section 33.095, RSMo 1986 and 1 CSR 10-11.020.

> 4) In view of the provisions of Article X, § 21 of the Constitution of Missouri, may a county be compelled to

reimburse mileage expense at an increased level absent a state appropriation to pay the same?

We decline to opine on this question since it has been the long-standing practice of this office not to opine on matters where related litigation is pending. Presently pending in the Supreme Court of Missouri is the case Farrington v. State of Missouri, No. 73558, involving a state statute mandating additional services by county election officers absent a state appropriation to pay the same. Because of this pending litigation, we respectfully decline to opine on your question.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CITIES, TOWNS AND VILLAGES:
CITY ANNEXATION:
WATER SUPPLY - WATER SUPPLY DISTRICTS:

Section 247.170, RSMo 1986, does not provide a method whereby a county public water supply district may, upon annexation by a city owning a water supply system, require the detachment of the area annexed by the city and the assumption by the city of a proportionate part of the district's debt, without the consent and agreement of the city.

January 2, 1991

OPINION NO. 66-91

The Honorable Carson Ross
Representative, District 49
State Capitol Building, Room 105J
Jefferson City, Missouri 65101

Dear Representative Ross:

This opinion is in response to your question asking:

> Does Section 247.170 RSMo. provide a method whereby a county public water supply district may, upon annexation by a city owning a water supply system, require the detachment of the area annexed by the city and the assumption by the city of a proportionate part of the district's debt, without the consent and agreement of the city?

Section 247.170, RSMo 1986, provides:

> 247.170. Detachment of part of district included in city--procedure--election.--1. Whenever any city owning a waterworks or water supply system extends its corporate limits to include any part of the area in a public water supply district, and the city and the board of directors of the district are unable to agree upon a service, lease or sale agreement, or are unable to proceed under section 247.160,

then upon the expiration of ninety days after the effective date of the extension of the city limits, that part of the area of the district included within the corporate limits of the city may be detached and excluded from the district in the following manner:

(1) A petition to detach and exclude that part of the public water supply district lying within the corporate limits of the city as such limits have been extended, signed by not less than twenty-five voters within the water supply district, shall be filed in the circuit court of the county in which the district was originally organized.

(2) The court, being satisfied as to the sufficiency of the petition, shall call a special election of the voters of the district at which election the proposal to detach and exclude the part of the district lying within the corporate limits of the city shall be submitted to the voters in the entire district for a vote thereon, if the city has first agreed to the holding of the election. The election shall be conducted within the district by the election authority.

(3) The ballot shall briefly state the question to be voted on.

(4) In order to approve the detachment and exclusion of any part of the area in a public water supply district, the proposal shall require the approval of not less than a majority of the voters voting thereon.

(5) The election authorities shall thereafter promptly certify the result to the circuit court. The court, acting as a court of equity, shall thereupon without delay enter a decree detaching and excluding the area in question located within the corporate limits of the city from the public water supply district;

except that before the decree detaching and excluding the area becomes final or effective, the city shall show to the court that it has assumed and agreed to pay in lump sum or in installments not less than that proportion of the sum of all existing liquidated general obligations and of all unpaid revenue bonds and interest thereon to date, of the water supply district as the assessed valuation of the real and tangible personal property within the area sought to be detached and excluded bears to the assessed valuation of all of the real and tangible personal property within the entire area of the district, according to the official county assessment of property as of December thirty-first of the calendar year next preceding the date of the election, and in addition thereto that the city has assumed and agreed to pay the court costs.

(6) The decree shall thereupon vest in the city the absolute title, free and clear of all liens or encumbrances of every kind and character, to all tangible real and personal property of the public water supply district located within the part of the district situated within the corporate limits of the city with full power in the city to use and dispose of the tangible real and personal property as it deems best in the public interest.

(7) If the proposal fails to receive the approval of the voters the question may be again presented by another petition and again voted on, but not sooner than six months.

(8) Any and all sums paid out by the city under this section, other than the costs of the election, shall be administered by the circuit court for the benefit of the holders of the then existing and outstanding bonds of the district, and the remainder of such sums, if any, shall be delivered to the district to be expended

> in the operation, maintenance and improvement of its water distribution system.
>
> 2. Upon the effective date of any final order detaching and excluding any part of the area of any public water supply district, or leasing, selling or conveying any of the water mains, plant or equipment therein, the circuit court may, in the public interest, change the boundaries of the public water supply district and again divide or redivide the district into subdistricts for the election of directors in conformity with the provisions of section 247.040, without further petition being filed with the court so to do. [Emphasis added.]

In construing a statute, legislative intent should be determined from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). Courts must construe a statute as it stands and must give effect to it as it is written. Wilson v. McNeal, 575 S.W.2d 802, 810 (Mo. App. 1978). A court may not engraft upon the statute provisions which do not appear in explicit words or by implication from other language in the statute. Id. Section 247.170.1(2) and (5) clearly state that the city must agree to the detachment proceedings. In Missouri Public Service Company v. Platte-Clay Electric Cooperative, Inc., 407 S.W.2d 883 (Mo. 1966), the Missouri Supreme Court identified Section 247.170, RSMo, as providing "a method by which the municipality may acquire the assets of a district lying within an area annexed by a city, without the consent or agreement of the district." Id., 407 S.W.2d at 892. [Emphasis in original.]

Based upon the court's interpretation and the plain meaning of Section 247.170, RSMo 1986, we conclude that this section does not provide a method whereby a county public water supply district may, upon annexation by a city owning a water supply system, require the detachment of the area annexed by the city and the assumption by the city of a proportionate part of the district's debt, without the consent and agreement of the city.

CONCLUSION

It is the opinion of this office that Section 247.170, RSMo 1986, does not provide a method whereby a county public water supply district may, upon annexation by a city owning a water supply system, require the detachment of the area annexed by the city and the assumption by the city of a proportionate part of the district's debt, without the consent and agreement of the city.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

CITIES, TOWNS AND VILLAGES: State agencies are not required
STATE PROPERTY: to comply with conditional use
ZONING: permit regulations or zoning regulations of a fourth class city in using state-owned property within the city or constructing public facilities on such property.

February 21, 1991

OPINION NO. 70-91

The Honorable Timothy P. Green
Representative, District 71
State Capitol Building, Room 115A
Jefferson City, Missouri 65101

Dear Representative Green:

This opinion is in response to your question asking:

> Must state agencies comply with the conditional use permits and/or zoning regulations of a city prior to use of property or construction of proposed facilities?

We understand your question relates to state construction of various public facilities on state-owned land within a fourth class city.

In Paulus v. City of St. Louis, 446 S.W.2d 144 (St.L. App. 1969), the court held that an ordinance requiring a city building permit fee for construction did not apply to the state's construction of a state hospital on state property. The court stated "that an ordinance does not apply to a state with reference to its own property unless the charter expressly gives the city authority to bind the state or the state waives its right to regulate its property." Id. at 150.

In State v. Kopp, 330 S.W.2d 882 (Mo. 1960), the Missouri Supreme Court held that a fourth class city constructing sewer lagoons pursuant to statutory authority was not subject to the local zoning ordinances of the county in which the lagoons were located. The court stated "the authority to regulate and restrict the location and use of buildings and lands . . . relates to private property and . . . is not to be broadened to include a public use of property by the state. . . ." Id. at 888. With regard to the statute authorizing the county to

regulate the use of land, the court stated that "[t]he state and its agencies are not within the purview of a statute unless an intention to include them is clearly manifest, especially where prerogatives, rights, titles or interests of the state would be divested or diminished." Id. In a statement directly relating to your question, the court, quoting McQuillin on Municipal Corporations, stated "[z]oning restrictions cannot apply to the state or any of its agencies vested with the right of eminent domain in the use of land for public purposes. Id. at 889. The court held also that the fact that the city in Kopp had acquired rights in the lands by private negotiations and agreement with the owners, and not by eminent domain, did not change the holding of the case. Id.

Section 89.020, RSMo Supp. 1990, authorizes cities to regulate the use of land and the construction of buildings within the city. There is nothing within that section which specifically authorizes cities to regulate the use of state-owned property or the construction by the state of public facilities on that property. Based on the cases discussed above, the state or state agencies are not required to comply with conditional use permit regulations or zoning regulations unless the city has specific authority to regulate the use of state property or the construction of public facilities on that property, or unless the state has consented to such regulation. Therefore, we conclude state agencies are not required to comply with conditional use permit regulations or zoning regulations of a fourth class city in using state-owned property within the city or constructing public facilities on such property.

CONCLUSION

It is the opinion of this office that state agencies are not required to comply with conditional use permit regulations or zoning regulations of a fourth class city in using state-owned property within the city or constructing public facilities on such property.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ELECTIONS:
INITIATIVES:
INITIATIVE AND REFERENDUM:
SECRETARY OF STATE:

(1) As required by Section 116.120, RSMo Supp. 1990, and Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824 (Mo. banc 1990), the Secretary of State shall determine whether an initiative petition has more than one subject in violation of Article III, Section 50 of the Missouri Constitution at the time of review after signatures have been collected, (2) in determining whether an initiative petition has multiple subjects, the Secretary of State shall be guided by the Court's discussion in Missourians to Protect the Initiative Process v. Blunt, supra, and (3) the Secretary of State is not required by Section 116.120, RSMo Supp. 1990, or by Missourians to Protect the Initiative Process v. Blunt, supra, to seek a legal opinion from the Attorney General in determining whether an initiative petition has more than one subject matter.

March 29, 1991

OPINION NO. 77-91

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building, Room 208
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion is in response to your questions asking:

> First, when must the Secretary of State determine and announce that an initiative petition has more than one subject?
>
> Second, what criteria or standards are there to determine if an initiative petition has multiple subjects?
>
> Third, should the Secretary of State seek a legal opinion from the Attorney General in determining whether an initiative petition has more than one subject matter?

Along with your questions, you provide the following statement of facts.

> On October 29, 1990 the Missouri Supreme Court issued its majority opinion in Missourians To Protect The Initiative Process vs. Roy D. Blunt, No. 73148, (Mo banc Oct. 29, 1990). That decision clearly imposed a duty upon the Secretary of State to determine if an initiative petition has more than one subject matter. Although this duty was made clear, the decision did not make clear how and when this duty was to be carried out.
>
> Chapter 116 does not give guidance as to when the Secretary of State would decide an initiative petition has multiple subject matters. It is silent as to how and when that specific judgment would be made.
>
> The Secretary of State will have to begin accepting initiative petitions in the summer of 1991. By that time, it will be necessary to know the answers to [these questions] to insure the mandate imposed by Missourians To Protect The Initiative Process vs. Roy D. Blunt is carried out.

Chapter 116, RSMo, describes the initiative petition process. Pursuant to the provisions of Chapter 116, the Secretary of State is required to review initiative petitions at two stages of the initiative process.

Before an initiative petition or constitutional amendment petition may be circulated for signatures, a sample sheet must be submitted to the Secretary of State. Section 116.332, RSMo 1986. At this stage, the Secretary of State is required to refer a copy of the petition sheet to the Attorney General. Section 116.332.1, RSMo 1986. "The secretary of state and attorney general must each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any." [Emphasis added.] Id. Upon review of comments provided by the Attorney General, the Secretary of State makes "a final decision as to the approval or rejection of the form of the petition." Section 116.332.2, RSMo 1986. The form of the petition is set forth in Sections 116.040 and 116.050, RSMo 1986.

If the petition is approved as to form, the Secretary of State prepares "a concise statement not exceeding one hundred words" in the form of a question. Section 116.334, RSMo 1986. This statement is then forwarded to the Attorney General for

approval of "the legal content and form of the proposed statement." Id. This statement becomes "the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot." Id.

The second stage of review by the Secretary of State is provided for in Section 116.120, RSMo Supp. 1990, which states in pertinent part:

> 116.120. Secretary of state to determine sufficiency of form and compliance--signatures may be verified by random sampling, procedure and requirements.--1. When an initiative or referendum petition is submitted to the secretary of state, he shall examine the petition to determine whether it complies with the Constitution of Missouri and with this chapter. The secretary of state may verify the signatures on the petition by use of random sampling. The random sample of signatures to be verified shall be drawn in such a manner that every signature filed with the secretary of state shall be given an equal opportunity to be included in the sample. Such a random sampling shall include an examination of five percent of the signatures. [Emphasis added.]

* * *

After completing this review, Section 116.150, RSMo Supp. 1990, requires the Secretary of State to issue a certificate of sufficiency of the petition.

> 116.150. Secretary of state to issue certificate of sufficiency of petition--if insufficient, certificate to state reasons.--1. After the secretary of state makes his determination on the sufficiency of the petition and if he finds it sufficient, he shall issue a certificate setting forth that the petition contains a sufficient number of valid signatures to comply with the Constitution of Missouri and with this chapter.
>
> 2. The secretary of state shall issue a certificate only for a petition approved pursuant to section 116.332. If the

> secretary of state finds the petition insufficient, he shall issue a certificate stating the reason for the insufficiency.

In Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824 (Mo. banc 1990), the Missouri Supreme Court upheld the circuit court's finding that an initiative proposal failed to comply with the single subject requirement of Article III, Section 50 of the Missouri Constitution. This section provides:

> Section 50. Initiative petitions--signatures required--form and procedure. Initiative petitions proposing amendments to the constitution shall be signed by eight percent of the legal voters in each of two-thirds of the congressional districts in the state, and petitions proposing laws shall be signed by five percent of such voters. Every such petition shall be filed with the secretary of state not less than four months before the election and shall contain an enacting clause and the full text of the measure. Petitions for constitutional amendments shall not contain more than one amended and revised article of this constitution, or one new article which shall not contain more than one subject and matters properly connected therewith, and the enacting clause thereof shall be "Be it resolved by the people of the state of Missouri that the Constitution be amended:". Petitions for laws shall contain not more than one subject which shall be expressed clearly in the title, and the enacting clause thereof shall be "Be it enacted by the people of the state of Missouri:".

The Missouri Supreme Court determined that pursuant to Section 116.120, RSMo,

> the Secretary of State is charged with determining whether the petition "complies with the Constitution of Missouri and with this Chapter." § 116.120.1. If the legislature had only intended that the Secretary of State count signatures, it could have so stated. But the language used mandates a more extensive

> examination. At minimum, § 116.120.1 requires the Secretary of State to examine the petition to insure that the threshold requirements of article III, § 50 have been met. That necessarily requires the Secretary of State to examine the proposal to insure it does not contain multiple subjects.

Missourians to Protect the Initiative Process v. Blunt, supra, 799 S.W.2d at 828.

In the context of these provisions and the opinion of the Court, we address your specific questions.

> 1. When must the Secretary of State determine and announce that an initiative petition has more than one subject?

Because the Court's opinion states that the Secretary of State's examination to insure a proposal does not contain multiple subjects is required by Section 116.120.1, RSMo Supp. 1990, such review should be made at the stage of the initiative process governed by that section. Legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). Section 116.120, RSMo Supp. 1990, requires the Secretary of State to determine whether a petition complies with the Constitution of Missouri, and this section also provides a method for verifying signatures. Based upon the plain meaning of the language of this section, we believe it refers to a petition submitted to the Secretary of State after signatures have been collected.[1]

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[1]Further support for this conclusion is found in the Court's determination that "Section 116.190 does not authorize a review as to whether the constitutional prerequisites have been met. The legislature has provided another remedy, and that remedy is found under § 116.200." Missourians to Protect the Initiative Process v. Blunt, supra, 799 S.W.2d at 829. Section 116.190, RSMo 1986, addresses the earlier stage of review by the Secretary of State and requires that an action to challenge an official ballot title "must be brought within ten days after the official ballot title is provided or the fiscal note and fiscal note summary are provided to the secretary of state in

(Footnote Continued)

Therefore, we conclude that the Secretary of State shall determine whether an initiative petition has more than one subject at the time of review after signatures have been collected, as required by Section 116.120, RSMo Supp. 1990, and Missourians to Protect the Initiative Process v. Blunt, supra.

> 2. What criteria or standards are there to determine if an initiative petition has multiple subjects?

In Missourians to Protect the Initiative Process v. Blunt, supra, the Court provides guidance for determining if an initiative petition has multiple subjects.

> In determining whether the proposed constitutional amendment violates the "one subject" rule, there are certain general principles that have been established. A proposal will be liberally and nonrestrictively construed so that provisions connected with or incident to effectuating the central purpose of the proposal will not be treated as separate subjects.

Id., 799 S.W.2d at 830. See also Buchanan v. Kirkpatrick, 615 S.W.2d 6, 12-13 (Mo. banc 1981)(an amendment does not violate the "one subject" rule if there is a central purpose to the amendment); Oregon Education Association v. Phillips, 302 Or. 87, 727 P.2d 602, 609 (1986)(en banc)(a proposal obviously involves only one subject, for example, when it amends one section of the constitution by repealing it or amends one section to change one specific provision).

> An amendment to any article may have the effect of changing several articles or

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(Footnote Continued)
accordance with sections 116.160, 116.170 and 116.334." Section 116.200, RSMo 1986, addresses the later review by the Secretary of State when signatures are submitted, and it provides in part: "After the secretary of state certifies a petition as sufficient or insufficient, any citizen may apply to the circuit court of Cole County to compel him to reverse his decision. The action must be brought within ten days after the certification is made. . . ."

> sections of the constitution, if all are germane to a single controlling purpose. [Court's emphasis.]

Missourians to Protect the Initiative Process v. Blunt, supra, 799 S.W.2d at 830-831. See also Moore v. Brown, 165 S.W.2d 657, 662 (Mo. banc 1942)("one constitutional amendment may change several articles or sections of a Constitution if all these changes are germane to a single controlling purpose.")

> Ultimately each proposal to amend the constitution must turn on the particular language and the subject matter involved.

Missourians to Protect the Initiative Process v. Blunt, supra, 799 S.W.2d at 831. The Court identified certain provisions of a petition that warrant special scrutiny when reviewing for multiple subjects.

> The organizational headings of the constitution are strong evidence of what those who drafted and adopted the constitution meant by "one subject."
>
> The fact that a single initiative petition amending one article has the effect of amending more than one article of the constitution does not render the proposal per se in violation of the multiple subject prohibition; however, a proposal having such effect is suspect. When a proposal deals with matters that were previously the subject of an article other than the one being amended, the Court must scrutinize the proposal to see if all matters included relate to a readily identifiable and reasonably narrow central purpose.

Id., 799 S.W.2d at 831.

> 3. Should the Secretary of State seek a legal opinion from the Attorney General in determining whether an initiative petition has more than one subject matter?

As stated in response to your first question, the Missouri Supreme Court concluded that the Secretary of State is required by Section 116.120, RSMo Supp. 1990, to determine whether a proposal contains multiple subjects. While Section 116.332,

RSMo 1986, specifically requires the Secretary of State to submit a copy of a petition sample sheet to the Attorney General for review as to form and Section 116.334, RSMo 1986, requires the Secretary of State to submit the ballot title to the Attorney General for review, Section 116.120, RSMo Supp. 1990, does not provide for review by the Attorney General.

Therefore, we conclude the Secretary of State is not required by Section 116.120, RSMo Supp. 1990, or by Missourians to Protect the Initiative Process v. Blunt, supra, to seek a legal opinion from the Attorney General in determining whether an initiative petition has more than one subject matter.

CONCLUSION

It is the opinion of this office that (1) as required by Section 116.120, RSMo Supp. 1990, and Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824 (Mo. banc 1990), the Secretary of State shall determine whether an initiative petition has more than one subject in violation of Article III, Section 50 of the Missouri Constitution at the time of review after signatures have been collected, (2) in determining whether an initiative petition has multiple subjects, the Secretary of State shall be guided by the Court's discussion in Missourians to Protect the Initiative Process v. Blunt, supra, and (3) the Secretary of State is not required by Section 116.120, RSMo Supp. 1990, or by Missourians to Protect the Initiative Process v. Blunt, supra, to seek a legal opinion from the Attorney General in determining whether an initiative petition has more than one subject matter.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CRIMES:
CRIMINAL INVESTIGATIONS:
CRIMINAL PROCEDURE:
DEPARTMENT OF PUBLIC SAFETY:

The installation and use of pen registers pursuant to Section 542.408.7, RSMo Supp. 1990, is not limited to investigations involving controlled substances.

March 1, 1991

OPINION NO. 80-91

Richard C. Rice, Director
Department of Public Safety
Truman State Office Building
Jefferson City, Missouri 65101

Dear Director Rice:

This opinion is in response to your question asking:

> The installation and use of pen registers is authorized under Section 542.408(7), RSMo. The question of law is whether pen registers may be applied to crimes other than those involving "controlled substances," e.g., gambling, auto theft, prostitution and the like.

A pen register is a device which monitors what telephone numbers are dialed from a particular telephone, without intercepting the contents of any telephone conversations. Smith v. Maryland, 442 U.S. 735, 736 (n. 1), 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979).

Section 542.408.7, RSMo Supp. 1990, states as follows:

> 7. Notwithstanding any other provisions of sections 542.400 to 542.424, any law enforcement officer with the approval of the prosecuting attorney may request an order of an appropriate court whenever reasonable grounds therefor exist to have a pen register placed in effect, which pen register will only determine the phone number to which the call is placed.

With the exception of the above provision, Sections 542.400 to 542.424, RSMo Supp. 1990, address a separate and distinct form

of electronic surveillance: the interception by court order of the contents of wire communications ("wiretapping"). These statutes specify, among other things, that a wiretapping application must be made by the elected prosecuting attorney of the county with the written authorization of the Attorney General of Missouri, Section 542.404.1; that a court order authorizing a wiretap cannot issue except upon a showing of probable cause, Section 542.408.3; and that the interception of wire communications may be requested or obtained only when such interception may provide information regarding specified drug offenses. The last of these limitations appears in Section 542.404.1, which states in pertinent part as follows:

> [A court may grant] an order authorizing the interception of wire communications by the law enforcement agency having responsibility for the investigation of the offense if there is probable cause to believe that the interception may provide evidence of:
>
> (1) A felony which involves the manufacture, importation, receiving, possession, buying, selling, prescription, administration, dispensation, distribution, compounding or otherwise having in a person's control any controlled substance, as the term "controlled substance" is defined in section 195.010, RSMo; or
>
> (2) Any conspiracy to commit any of the offenses listed in subdivision (1) of this subsection.

The fundamental rule in the construction of statutes is to determine the intent of the legislature from the statutory language, to give effect to that intent where possible and to consider the words used in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). "[W]here a statute's language is clear and unambiguous, there is no room for construction." Id. Section 542.408.7 states, unequivocally and without exception, that the provision in that subsection for obtaining a court order authorizing a pen register is "[n]otwithstanding any other provisions of sections 542.400 to 542.424." It would seem to follow of necessity from this language that the requirements and restrictions concerning wiretapping which appear elsewhere in Sections 542.400 through 542.424, including the limitation in Section 542.404.1 on the types of crimes for which an

application may be made, do not govern requests for pen registers. Similar language has been employed in a number of other statutes in which it was clear, from context, that the intent of the legislature was to completely exempt that provision from the operation of other laws which might otherwise apply. See, e.g., Sections 473.433.4, 565.021.3 and 572.125.2, RSMo 1986.

Aside from the plain language of Section 542.408.7, a construction of that subsection as being subject to the requirements and limitations of Sections 542.400 through 542.424 would lead to direct conflicts between Section 542.408.7 and the surrounding statutes. For example, a showing of probable cause is required under Section 542.408.3 for the issuance of a wiretap order, whereas Section 542.408.7 specifies that the standard for authorizing a pen register is whether "reasonable grounds . . . exist." Similarly, Section 542.404.1 directs that wiretap applications be made by "[t]he elected prosecuting attorney of the county with the written authorization of the attorney general," while the subsection relating to pen registers provides that the request is made by "any law enforcement officer with the approval of the prosecuting attorney." Section 542.408.7. "In determining the legislature's intention, the provisions of the entire legislative act must be construed together, and if reasonably possible, all the provisions must be harmonized." Collins v. Director of Revenue, 691 S.W.2d 246, 251 (Mo. banc 1985).

Finally, it should be noted that the statutory provisions on wiretapping in Sections 542.400 through 542.424 are taken directly, and to a large extent verbatim, from the federal law on electronic surveillance, 18 U.S.C. §§2510 through 2521. Federal law preempts the field of electronic surveillance, and equivalent state legislation is required before such surveillance may be conducted by state authorities. 18 U.S.C. §2516(2). Where, as here, a statute is copied from one in another jurisdiction, "there is a presumption that it was enacted with the construction placed upon it by the courts of that [jurisdiction], unless contrary to the clear meaning of the terms of the statute." Gilroy-Sims and Associates v. Downtown St. Louis Business District, 729 S.W.2d 504, 508 (Mo.App. 1987). In United States v. New York Telephone Co., 434 U.S. 159, 98 S.Ct. 364, 54 L.Ed.2d 376 (1977), the United States Supreme Court held that the statutory requirements and limitations which apply to wiretapping and similar forms of electronic surveillance do not govern pen registers. Id., 434 U.S. at 165-168. The basis for the Supreme Court's ruling was that the federal statutes regulate the "interception" of wire or oral communications, whereas pen registers do not "intercept"

communications because the contents of communications are not obtained. Id., 434 U.S. at 166-167. The statutory limitations on wiretapping enacted in the State of Missouri, including the requirement that wiretapping be limited to specified drug offenses, are all expressly phrased as restrictions on "the interception of a wire communication," and this state's definition of "intercept," Section 542.400(6), employs the same essential language as appears in the equivalent federal definition, 18 U.S.C. §2510(4), and which was relied upon by the United States Supreme Court. United States v. New York Telephone Co., supra, 434 U.S. at 167.

CONCLUSION

It is the opinion of this office that the installation and use of pen registers pursuant to Section 542.408.7, RSMo Supp. 1990, is not limited to investigations involving controlled substances.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

BALLOTS:
COUNTIES:
COUNTY ELECTIONS:
ELECTION BALLOTS:
ELECTIONS:
LANDFILLS:
INITIATIVE PETITION:
INITIATIVE:
INITIATIVE AND REFERENDUM:

Mercer County is not authorized to conduct a nonbinding referendum on whether the voters favor a hazardous waste ash landfill and/or incinerator locating in Mercer County.

February 21, 1991

OPINION NO. 85-91

The Honorable Steve Danner
Senator, District 28
State Capitol Building, Room 329
Jefferson City, Missouri 65101

Dear Senator Danner:

This opinion is in response to your question asking:

> Can the County Commission and/or an initiative petition place a nonbinding referendum before the voters of Mercer County which states: "Do you favor a hazardous waste ash landfill and/or incinerator locating in Mercer County, Missouri?"

Enclosed herein is a copy of Missouri Attorney General Opinion No. 478, Weier, 1969; a copy of Missouri Attorney General Opinion Letter No. 111, Harper, 1978; and a copy of Missouri Attorney General Opinion No. 204-87. As discussed in these opinions, the county commission can only place a proposition on the ballot when so authorized by law. A review of the applicable statutes does not reveal any law authorizing the Mercer County Commission to call a nonbinding referendum on whether the voters of Mercer County favor a hazardous waste ash landfill and/or incinerator locating in Mercer County, Missouri.

With respect to whether an initiative petition can place a nonbinding referendum before the voters of Mercer County, there is no authority for a county to conduct a referendum on such an issue if requested by initiative petition. As stated in the enclosed opinions, Article III, Sections 49 and 52(a) of the

Missouri Constitution pertain only to referendum on acts of the General Assembly.

CONCLUSION

It is the opinion of this office that Mercer County is not authorized to conduct a nonbinding referendum on whether the voters favor a hazardous waste ash landfill and/or incinerator locating in Mercer County.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosures:
Opinion No. 478, Weier, 1969
Opinion Letter No. 111, Harper, 1978
Opinion No. 204-87

COMPENSATION:
COUNTIES:
PUBLIC ADMINISTRATOR:

A county public administrator who began a four year term of office on January 1, 1989, who receives fees of more than $15,000 but less than $25,000, and who completes the required training is entitled to $2,000 of the $4,000 additional compensation provided in Section 473.739, RSMo Supp. 1990.

August 30, 1991

OPINION NO. 88-91

Stephen P. Sokoloff
Dunklin County Prosecuting Attorney
Dunklin County Courthouse
Kennett, Missouri 63857

Dear Mr. Sokoloff:

This opinion is in response to your question asking:

> Does the amendment to Section 473.739, RSMo (1990 Supp.), particularly that portion amending the maximum allowable fees received by a public administrator which entitles such public administrator to receive the annual compensation of $4,000.00, apply to a public administrator whose term of office commenced January 1, 1989, so as to make such public administrator eligible for the additional fees up to the $25,000.00 ceiling, and still maintain eligibility for the $4,000.00 annual compensation?

Along with your question you state:

> The Public Administrator of Dunklin County, Missouri (a third class county) commenced his four year term of office on January 1, 1989. The prior revision of Section 473.739 RSMo (1984) provided that a Public Administrator who received less than $15,000.00 in fees was entitled to receive as compensation the sum of $4,000.00. In 1990, Section 473.739 RSMo was amended to raise the cap on fees to $25,000.00 without disqualifying the Public [Administrator]

> from receiving the $4,000.00 compensation. For the year 1990, the Public Administrator of Dunklin County, Missouri, received in excess of $15,000.00 in other fees, but less than $25,000.00.

Section 473.739, RSMo 1986, provided:

> 473.739. Compensation for attendance at training sessions for county officials, certain administrators.--Each public administrator, except in counties of the first class with a charter form of government, who does not receive at least fifteen thousand dollars in fees as otherwise allowed by law in the years 1984 and 1985, upon certification by the Missouri Association of Public Administrators of attendance at a training program required by the provisions of section 67.130, RSMo, shall receive annual compensation of four thousand dollars for the year 1985, and a proportionate part of four thousand dollars for that part of the year 1984 when this section is in effect, for the added duty of attending the training program required by the provisions of section 67.130, RSMo. This additional compensation shall be paid on January 1, 1985, for that part to which he is entitled for the year 1984, and on January 1, 1986, for that to which he is entitled for the year 1985, or as soon after those dates as the public administrator may be able to establish the total of the fees paid for those years. [Emphasis added.]

Section 473.739 was amended in 1987 by Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 65, 133, 178, 216 and 231, 84th General Assembly, First Regular Session, and provided:

> 473.739. Compensation for attendance at training session, certain public administrators, expenses may be reimbursed, when (noncharter counties).--1. Each public administrator, except in counties of the first class with a charter form of

> government, who does not receive at least fifteen thousand dollars in fees as otherwise allowed by law shall receive annual compensation of four thousand dollars.
>
> 2. Two thousand dollars of the compensation authorized in this section shall be payable to the public administrator only if he has completed at least twenty hours of classroom instruction each calendar year relating to the operations of the public administrator's office when approved by a professional association of the county public administrators of Missouri unless exempted from the training by the professional association. The professional association approving the program shall provide a certificate of completion to each public administrator who completes the training program and shall send a list of certified public administrators to the treasurer of each county. Expenses incurred for attending the training session may be reimbursed to the county public administrator in the same manner as other expenses as may be appropriated for that purpose.

Section 473.739 was again amended by Senate Bill No. 580, 85th General Assembly, Second Regular Session (1990). Section 473.739, RSMo Supp. 1990, provides:

> 473.739. Compensation for attendance at training session, certain public administrators, expenses may be reimbursed, when (noncharter counties).--1. Each public administrator, except in counties of the first class with a charter form of government, who does not receive at least twenty-five thousand dollars in fees as otherwise allowed by law shall receive annual compensation of four thousand dollars and each such public administrator who does not receive at least twenty-five thousand dollars in fees may request the county salary commission for an increase in annual compensation and the county salary

> commission may authorize an additional increase in annual compensation not to exceed ten thousand dollars.
>
> 2. Two thousand dollars of the compensation authorized in this section shall be payable to the public administrator only if he has completed at least twenty hours of classroom instruction each calendar year relating to the operations of the public administrator's office when approved by a professional association of the county public administrators of Missouri unless exempted from the training by the professional association. The professional association approving the program shall provide a certificate of completion to each public administrator who completes the training program and shall send a list of certified public administrators to the treasurer of each county. Expenses incurred for attending the training session may be reimbursed to the county public administrator in the same manner as other expenses as may be appropriated for that purpose.

Article VII, Section 13 of the Missouri Constitution states:

> Section 13. Limitation on increase of compensation and extension of terms of office. The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended.

In Mooney v. County of St. Louis, 286 S.W.2d 763 (Mo. 1956), the Missouri Supreme Court interpreted a statute increasing the compensation of members of the Board of Election Commissioners of St. Louis County. The court stated:

> We must assume that the members of the General Assembly were fully cognizant of the instant constitutional limitation. In all of the cases we have examined in which an increase during the term of office has been upheld, the legislature, in the Act creating the additional duties, has

> specifically provided that the extra compensation was for the performance of those duties.

Id., 286 S.W.2d at 766. The court concluded that former members of the St. Louis County Board of Election Commissioners were not entitled to recover additional compensation where there was no showing that the increase was to compensate for new and additional duties.

In answering your question, there are two issues to address: whether the amendment to Section 473.739 enacted by Senate Bill No. 580 provides for an increase in compensation and, if so, whether the increase is to compensate for new and additional duties.

The amendment enacted by Senate Bill No. 580 provides additional compensation in the amount of $4,000 for public administrators who receive more than $15,000 but less than $25,000 in fees. Prior to this enactment, such compensation was not available. Because this provision was not in existence prior to the beginning of the term of the Dunklin County Public Administrator, the 1990 amendment does increase compensation during the term of office. The question, then, is whether the increase is compensation for new and additional duties.

Section 473.739.2, RSMo Supp. 1990, provides:

> 2. Two thousand dollars of the compensation authorized in this section shall be payable to the public administrator only if he has completed at least twenty hours of classroom instruction each calendar year relating to the operations of the public administrator's office when approved by a professional association of the county public administrators of Missouri. . . . [Emphasis added.]

We note that the provisions relating to training for county officials were enacted by Senate Committee Substitute for Senate Bill No. 601, 82nd General Assembly, Second Regular Session (1984), the same bill that first enacted Section 473.739. These provisions are codified at Section 67.130, RSMo 1986, among others. Section 67.130, RSMo 1986, provides in part:

> 67.130. Training commission for county officials established--purposes--

> members--appointment--duties.--1. The various associations of county officials may establish a training commission for county clerks, county collectors, county assessors, county treasurers, county auditors, county coroners and medical examiners, county sheriffs, county recorders of deeds, county commissioners and certain public administrators training programs established by such commissions shall consist of not less than twenty nor more than thirty hours of actual instruction per year, to deal with areas of concern in intergovernmental relations between state offices and the aforesaid county officers. The training commission may call upon the appropriate state offices for assistance in developing and administering the training programs. Each county officer named above shall annually attend the training program required by the provisions of this section. [Emphasis added.]
>
> * * *

Statutes relating to the same subject must be considered together, particularly those provisions adopted in the same act. Cascio v. Beam, 594 S.W.2d 942 (Mo. banc 1980).

We believe the reference to "certain public administrators" in Section 67.130, RSMo 1986, referred to the public administrators listed in Section 473.739, RSMo 1986, namely, "[e]ach public administrator, except in counties of the first class with a charter form of government, who does not receive at least fifteen thousand dollars in fees as otherwise allowed by law. . . ."

Because public administrators receiving more than $15,000 but less than $25,000 in fees were not included in Section 473.739, RSMo, until the 1990 amendment, we conclude that the training requirement became a new responsibility for such public administrators in 1990. Two thousand dollars of the four thousand dollars additional compensation provided in Section 473.739.1, RSMo Supp. 1990, is conditioned upon completion of required training. Section 473.739.2, RSMo Supp. 1990. Since $2,000 is compensation for additional duties, such compensation is not in violation of Article VII, Section 13 of the Missouri

Constitution. See Mooney v. County of St. Louis, supra, 286 S.W.2d at 766.

We find no provisions leading to the conclusion that the remaining $2,000 is intended as compensation for new and additional duties. Therefore, we conclude that pursuant to Article VII, Section 13 of the Missouri Constitution, a public administrator who began his term of office on January 1, 1989, and receives more than $15,000 but less than $25,000 in fees is not entitled to receive in his present term of office the additional $2,000 provided in Section 473.739, RSMo Supp. 1990.

CONCLUSION

It is the opinion of this office that a county public administrator who began a four year term of office on January 1, 1989, who receives fees of more than $15,000 but less than $25,000, and who completes the required training is entitled to $2,000 of the $4,000 additional compensation provided in Section 473.739, RSMo Supp. 1990.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ASSESSMENTS:
CITIES, TOWNS AND VILLAGES:
SPECIAL ASSESSMENTS:
VILLAGES:

A county collector is not authorized under Section 80.480, RSMo 1986, to collect current special assessments levied by a village but is authorized under Sections 140.670 and 140.680, RSMo 1986, to collect such delinquent special assessments.

October 18, 1991

OPINION NO. 91-91

The Honorable Emory Melton
Senator, District 29
State Capitol Building, Room 420A
Jefferson City, Missouri 65101

Dear Senator Melton:

This opinion is in response to your question asking:

> The Village of Emerald Beach in Barry County has requested the County Collector of Revenue to collect maintenance fees for streets, weed cutting and water works which the village has denominated as "taxes." These fees are assessed by virtue of a village ordinance and billed to the lot owners as "taxes."
>
> Assuming the Village has the authority under Chapter 80, RSMo 1986, to make a valid charge to lot owners does the County Collector of Revenue have any obligation or authority to collect these fees under Section 80.480, RSMo 1986? Or, in other words, is the application of Section 80.480 RSMo 1986, limited to taxes resulting from a levy imposed on the real estate and personal property by the Village under Section 80.430?

Section 80.480, RSMo 1986, provides:

> 80.480. Assessment and collection of revenues.--All assessments on real and personal property within the limits of such

town, which may be certified and transmitted to the board of trustees, from time to time, as provided in section 80.460, shall be taken and considered as the lawful and proper assessment on which to levy and collect the municipal taxes of the town, and the payment of all taxes authorized by this chapter shall be enforced by the collector in the same manner and under the same rules and regulations as may be provided by law for collecting and enforcing the payment of state and county taxes, and for that purpose it shall be the duty of the board of trustees to require the collector, annually, to make out and return, under oath, a list of delinquent taxes remaining due and uncollected on the first day of January of each year, to be known as the delinquent list. It shall be the duty of the board of trustees, at the next meeting after such delinquent list shall be returned, or as soon thereafter as convenient, carefully to examine the same, and if it shall appear that all property and taxes contained in said list are properly returned as delinquent, they shall approve such list and cause an order of approval to be entered on the journal, and the amount of taxes in such list to be credited on the account of the collector; and shall also cause said delinquent list or a certified copy thereof, with the bills therefor, to be placed in the hands of the county collector, who shall give a receipt therefor and proceed to collect the taxes due thereon, in like manner and with the same effect as delinquent taxes for state and county purposes are collected. The said collector shall pay over the taxes collected to the city treasurer, at the times and in the manner provided by law for the payment of county taxes to the county treasurer, and shall make the same statements and settlements for such taxes with the board of trustees, and at the same time as may be provided by law for statements and settlements with the county court for county taxes, and all taxes shall bear the same rate of interest, and the

> same penalties shall attach to the nonpayment thereof when due, as may be provided by law in cases of county taxes. A certified copy of any tax bill included in the delinquent list, approved by the board of trustees, shall in all cases be prima facie evidence that the amount therein specified is legally due by the party against whom such tax bill is made out, and that all provisions of the law and ordinances have been duly complied with, and that the same is a lien on the property therein described.

In Attorney General Opinion No. 99, Woolsey, December 27, 1955, a copy of which is enclosed, this office concluded that Section 80.480, RSMo, makes it the duty of the town or village collector provided for by Section 80.240, RSMo, to collect taxes levied by the board of trustees of an incorporated village or town. As interpreted by Opinion No. 99, supra, Section 80.480, RSMo, imposes a duty on the county collector only when the town or village collector prepares a delinquent tax list for the board of trustees who then turns it over to the county collector for collection. Although Opinion No. 99, supra, is somewhat dated, the statutes discussed have not changed, and it remains valid.

Your question does not indicate whether the charges discussed are considered to be delinquent. If not, pursuant to Opinion No. 99, supra, the county collector is not authorized under Section 80.480, RSMo 1986, to collect such charges.

Let us next consider the situation where such charges are considered to be delinquent. Section 80.480, RSMo 1986, provides in part that "the payment of all taxes authorized by this chapter shall be enforced by the collector in the same manner and under the same rules and regulations as may be provided by law for collecting and enforcing the payment of state and county taxes. . . ." [Emphasis added.] Throughout Section 80.480, RSMo 1986, the charges to which such section applies are referred to as "taxes." Legislative intent should be determined from the language used, considering words in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). Based on the language of Section 80.480, RSMo 1986, such section pertains to "taxes" authorized by Chapter 80, RSMo.

In Zahner v. City of Perryville, No. 73136, (Mo. banc, July 23, 1991), the Court examined the issue of whether assessments against properties for improvements, maintenance or

upkeep of paved streets abutting the properties were "taxes" or "fees" for purposes of Article X, Sections 16 to 24 of the Missouri Constitution (commonly referred to as the Hancock Amendment). The Court concluded that such special assessments were neither "taxes" nor "fees." The Court stated:

> While the words "special assessment," "fee," and "tax" may sometimes be used interchangeably, the term "special assessment" is generally understood to be related either to a specific property or a specific purpose. Webster's Third New International Dictionary 131 (1965). The special assessment levied in this case comports with the general understanding of a special assessment and does not comport with the definition of either tax or fee as the meanings of those words derive from the dictionary and from previous interpretation by this Court.

Id., slip op. at 5.

> The special assessment tax bills against abutting properties caused to be charged by the City of Perryville fit none of the established definitions of a tax. . . .

Id. at 7.

The charges discussed in your question would not fall within the meaning of a "tax" as referred to in Chapter 80, RSMo, but rather, a special assessment. Section 80.480, RSMo 1986, provides for delinquent "taxes" to be referred to the county collector for collection. So even if the charges are delinquent, the county collector is not authorized under Section 80.480, RSMo 1986, to collect such charges.

However, authority for the county collector to collect delinquent special assessments levied by a village is provided in Sections 140.670 and 140.680, RSMo 1986, which state:

> 140.670. City delinquent taxes, when returned--duties of collector.--1. The collectors of all cities and incorporated towns having authority to levy and collect taxes under their respective charters or under any law of this state, which return their delinquent tax lists to the county

> collector to collect, shall, on or before the first Monday in March, annually, return to the county collector a list of lands and lots on which the taxes or special assessments levied by the city or incorporated town remain due and unpaid.
>
> 2. The county collector shall receipt for the aggregate amount of the delinquent taxes, which receipt shall be held by the treasurer of the city or town, and shall stand as evidence of indebtedness upon the part of the county collector and his bondsmen to the city or town, until settlement in full has been made by payment to the treasurer or his successor of all taxes thus receipted for, or by a return of the part as is uncollectible. [Emphasis added.]
>
> 140.680. Power to collect such taxes.--The power to collect such city or incorporated town tax or special assessments before sale is hereby given to the county collector after said delinquent list is received by him. [Emphasis added.]

While Section 80.480, RSMo 1986, provides authority for the county collector to collect only delinquent "taxes" of a village, Sections 140.670 and 140.680, RSMo 1986, specifically authorize the collection of "special assessments" as well as "taxes."

Based on the foregoing, we conclude a county collector is authorized under Sections 140.670 and 140.680, RSMo 1986, to collect delinquent special assessments levied by a village.[1]

CONCLUSION

It is the opinion of this office that a county collector is not authorized under Section 80.480, RSMo 1986, to collect

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[1]As stated in your question, we assume the special assessments which are the subject of your inquiry are special assessments a village is authorized to levy.

current special assessments levied by a village but is authorized under Sections 140.670 and 140.680, RSMo 1986, to collect such delinquent special assessments.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 99, Woolsey, December 27, 1955

CHAUFFEUR LICENSE:
DEPARTMENT OF REVENUE:
DRIVERS LICENSE:
EMERGENCY VEHICLES:

Pursuant to Section 302.775(3), RSMo Supp. 1990, individuals driving emergency vehicles or fire equipment necessary to the preservation of life or property or the execution of emergency governmental functions are exempt from obtaining commercial driver's licenses while driving such vehicles both to and from emergency situations.

December 10, 1991

OPINION NO. 93-91

The Honorable Tom McCarthy
Senator, District 26
State Capitol Building, Room 331
Jefferson City, Missouri 65101

Dear Senator McCarthy:

This opinion is in response to your question asking:

> Section 302.775(3) states as follows: "any person who drives emergency or fire equipment necessary to the preservation of life or property or the execution of emergency governmental functions under emergency conditions."
>
> Does this section mean that fire service personnel are totally exempt from the requirement to obtain a commercial driver's license?

From the information included in your opinion request, it appears the issue of concern is whether a fire fighter needs a commercial driver's license to drive an emergency vehicle or fire equipment away from the scene of a fire after the fire has been extinguished and an emergency no longer exists.

Section 302.775(3), RSMo Supp. 1990, which exempts specified individuals from the requirement of obtaining a commercial driver's license, states that:

> 302.775. Provisions of law not applicable, when.--The provisions of sections 302.700 to 302.780 shall not apply to:

* * *

> (3) Any person who drives emergency or fire equipment necessary to the preservation of life or property or the execution of emergency governmental functions under emergency conditions;
>
> * * *

In interpreting the statute, a fundamental rule is to ascertain the intent of the General Assembly from the language used and to give effect to that intent. Brown Group, Inc. v. Administrative Hearing Commission, 649 S.W.2d 874, 881 (Mo. banc 1983). The plain and ordinary meaning of the statutory language should be given effect whenever possible. State ex rel. D.M. v. Hoester, 681 S.W.2d 449, 450 (Mo. banc 1984). It must be presumed that the legislature intended an enactment free from absurd consequences. Hyde v. City of Columbia, 637 S.W.2d 251, 262-263 (Mo. App. 1982).

The statute does not distinguish between emergency vehicles or fire equipment proceeding to an emergency situation and those returning from an emergency. A common sense interpretation would include the return from an emergency situation as being within the exemption. Otherwise, emergency personnel would be exempt from obtaining commercial driver's licenses while en route to a fire, for example, but would require such a license to return the emergency vehicle or fire equipment to the fire station. The legislature will not be presumed to have intended such an absurd result.

Therefore, we conclude that Section 302.775(3), RSMo Supp. 1990, exempts drivers of emergency vehicles or fire equipment while going both to and from an emergency situation.

CONCLUSION

It is the opinion of this office that pursuant to Section 302.775(3), RSMo Supp. 1990, individuals driving emergency vehicles or fire equipment necessary to the preservation of life or property or the execution of emergency governmental functions are exempt from obtaining commercial driver's licenses while driving such vehicles both to and from emergency situations.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

COMPENSATION:
COUNTIES:
PUBLIC ADMINISTRATOR:

Those county public administrators who were eligible to receive $4,000 in additional compensation pursuant to Section 473.739 prior to the amendment of such section by Senate Bill No. 580, 85th General Assembly, Second Regular Session (1990) continue to be eligible to receive the $4,000 in additional compensation after such amendment.

August 26, 1991

OPINION NO. 101-91

The Honorable Harold L. Caskey
Senator, District 31
State Capitol Building, Room 320
Jefferson City, Missouri 65101

Dear Senator Caskey:

This opinion is in response to your question asking:

> Section 473.739, RSMo Supp. 1989, provided that each public administrator, except in first class charter counties, who does not receive at least $15,000 in fees as otherwise allowed by law, shall receive annual compensation of $4,000.
>
> In 1990, SB 580 changed section 473.739 and raised the $15,000 to $25,000 in fees. If not making $25,000, a public administrator may request an increase in compensation from the county salary commission not to exceed $10,000. Would this change preclude those public administrators who were eligible, and who were receiving the $4,000, from continuing to receive this money even though the fee limit was raised to $25,000?

Section 473.739, RSMo 1986, provided:

> 473.739. Compensation for attendance at training sessions for county officials, certain administrators.--Each public

> administrator, except in counties of the first class with a charter form of government, who does not receive at least fifteen thousand dollars in fees as otherwise allowed by law in the years 1984 and 1985, upon certification by the Missouri Association of Public Administrators of attendance at a training program required by the provisions of section 67.130, RSMo, shall receive annual compensation of four thousand dollars for the year 1985, and a proportionate part of four thousand dollars for that part of the year 1984 when this section is in effect, for the added duty of attending the training program required by the provisions of section 67.130, RSMo. This additional compensation shall be paid on January 1, 1985, for that part to which he is entitled for the year 1984, and on January 1, 1986, for that to which he is entitled for the year 1985, or as soon after those dates as the public administrator may be able to establish the total of the fees paid for those years.

In 1987, Section 473.739 was amended by Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 65, 133, 178, 216 and 231, 84th General Assembly, First Regular Session, and provided:

> 473.739. Compensation for attendance at training session, certain public administrators, expenses may be reimbursed, when (noncharter counties).--1. Each public administrator, except in counties of the first class with a charter form of government, who does not receive at least fifteen thousand dollars in fees as otherwise allowed by law shall receive annual compensation of four thousand dollars.
>
> 2. Two thousand dollars of the compensation authorized in this section shall be payable to the public administrator only if he has completed at least twenty hours of classroom instruction

> each calendar year relating to the operations of the public administrator's office when approved by a professional association of the county public administrators of Missouri unless exempted from the training by the professional association. The professional association approving the program shall provide a certificate of completion to each public administrator who completes the training program and shall send a list of certified public administrators to the treasurer of each county. Expenses incurred for attending the training session may be reimbursed to the county public administrator in the same manner as other expenses as may be appropriated for that purpose.

Section 473.739 was again amended by Senate Bill No. 580, 85th General Assembly, Second Regular Session (1990). Section 473.739, RSMo Supp. 1990, provides:

> 473.739. Compensation for attendance at training session, certain public administrators, expenses may be reimbursed, when (noncharter counties).--1. Each public administrator, except in counties of the first class with a charter form of government, who does not receive at least twenty-five thousand dollars in fees as otherwise allowed by law shall receive annual compensation of four thousand dollars and each such public administrator who does not receive at least twenty-five thousand dollars in fees may request the county salary commission for an increase in annual compensation and the county salary commission may authorize an additional increase in annual compensation not to exceed ten thousand dollars.
>
> 2. Two thousand dollars of the compensation authorized in this section shall be payable to the public administrator only if he has completed at least twenty hours of classroom instruction each calendar year relating to the operations of the public administrator's

> office when approved by a professional association of the county public administrators of Missouri unless exempted from the training by the professional association. The professional association approving the program shall provide a certificate of completion to each public administrator who completes the training program and shall send a list of certified public administrators to the treasurer of each county. Expenses incurred for attending the training session may be reimbursed to the county public administrator in the same manner as other expenses as may be appropriated for that purpose. [Emphasis added.]

The underlined material above contains the language added by the 1990 amendment.

Legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). The ordinary, usual and commonly understood meaning of a word may be derived from the dictionary. Boone County Court v. State, 631 S.W.2d 321, 324 (Mo. banc 1982). Webster's New World Dictionary, Second College Edition, defines "additional" as: "added; more; extra." "And" is defined by the same source as: "also; in addition; moreover; as well as."

A public administrator who would have been eligible to receive the $4,000 in additional compensation prior to the 1990 amendment continues to be eligible to receive the $4,000 in additional compensation after such amendment. Your question presupposes that the public administrator would have been eligible to receive the $4,000 under the statute in effect prior to 1990. Therefore, the fees received by the public administrator are presumed to be less than $15,000, so the public administrator remains eligible under the criteria relating to fee limitation. The second change as a result of the 1990 amendment concerns an increase in compensation when authorized by the county salary commission. Such additional compensation when authorized by the county salary commission is "in addition" to the $4,000 authorized by Section 473.739 both before and after the 1990 amendment. The 1990 amendment added the provision for an increase in compensation when authorized by the county salary commission using the connector "and" ["added; more; extra"] and refers to such compensation as an "additional" ["also; in addition; moreover; as well as"] increase.

Therefore, a public administrator who is eligible continues to receive the $4,000 in additional compensation.

CONCLUSION

It is the opinion of this office that those county public administrators who were eligible to receive $4,000 in additional compensation pursuant to Section 473.739 prior to the amendment of such section by Senate Bill No. 580, 85th General Assembly, Second Regular Session (1990) continue to be eligible to receive the $4,000 in additional compensation after such amendment.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

April 8, 1991

OPINION LETTER NO. 102-91

The Honorable Jerry E. McBride
Representative, District 144
State Capitol Building, Room 411B
Jefferson City, Missouri 65101

Dear Representative McBride:

This opinion letter is in response to your question asking whether the public can have access to police records in alcohol-related cases. Based on a letter attached to your opinion request, we understand your question relates solely to the blood alcohol level of the arrested person as it appears on the ticket.

Sections 610.100, et seq., RSMo, are titled the Arrest Records Law. It is a segment of the "Sunshine Law," Chapter 610, RSMo. In Attorney General Opinion Letters Nos. 193-90 and 42-86, copies of which are enclosed, we addressed questions concerning access to arrest records and police investigative records. These opinion letters are of assistance in responding to your question.

Opinion Letter No. 193-90 discusses Sections 610.100 and 610.105, RSMo 1986, which provide as follows:

> 610.100. Arrest records, closed, when.--If any person is arrested and not charged with an offense against the law within thirty days of his arrest, official records of the arrest and of any detention or confinement incident thereto shall thereafter be closed records except as provided in section 610.120.
>
> 610.105. Effect of nolle pros--dismissal--sentence suspended on record.--If the person arrested is charged but the case is subsequently nolle prossed,

> dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except as provided in section 610.120.

In Opinion Letter No. 193-90, we concluded that pursuant to Sections 610.100 and 610.105, RSMo 1986, arrest records are open unless one of the enumerated events which would require the record to be closed has occurred. However, once one of these events has occurred, the record becomes a closed record as defined by Section 610.010, RSMo Supp. 1990, meaning that it is closed to the public.

In Opinion Letter No. 42-86, we observed that although Sections 610.100 and 610.105, RSMo,

> do not specifically refer to police investigative reports, they do refer to records of the arrest and official records pertaining to the case. The purpose of these statutes would be thwarted if such reports were to remain open while the arrest records or other case records were closed . . . Closing only the case record, however, would be ineffective in alleviating the stigma of the criminal charge if the public was permitted to obtain the same information from pre-arrest investigative reports. In other words, if pre-arrest investigative reports remain open, Section 610.105 becomes meaningless. Likewise, the closing of only the arrest and incarceration records under Section 610.100, is a futile effort if the public has access to the same information by examining the police investigative reports.

Id., pages 2-3. Therefore, in accordance with Opinion Letter No. 42-86, if one of the enumerated events occurs to require closure of arrest records, then any related police investigative records are also closed.

Opinion Letter No. 42-86 also addressed the closure of investigative records where arrest records have not been closed pursuant to Sections 610.100 and 610.105, RSMo 1986. As

discussed in that opinion letter, in Hyde v. City of Columbia, 637 S.W.2d 251 (Mo. App. 1982), the court indicated that investigative records of law enforcement agencies generally come within the definition of public records. Id., 637 S.W.2d at 259. Still, the court concluded that certain aspects of a police investigative file, specifically, the name of a victim when a suspect is still at large, are closed records in the interests of protecting personal privacy and personal safety. As noted in Opinion Letter No. 42-86, "[r]ecords may be or are closed because of the provisions of other statutes and, as extended by Hyde, because of other requirements for closure or deletion on a theory of law recognizing personal privacy, the efficient suppression and punishment of crime, the protection of third persons, or the like." Id., page 4. We observe, however, that the privacy interests addressed in Hyde were those of the victims of offenses. We do not find language in Hyde supporting the same protection of the privacy interests of criminal defendants.

Therefore, the blood alcohol level of an arrested person as it appears on a ticket is a matter of public record so long as the police investigative records and arrest records have not been closed pursuant to Sections 610.100 and 610.105, RSMo 1986. Once one of the enumerated events which requires closure has occurred, records relating to the case, including the blood alcohol level as reported on the ticket, become closed records.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosures:
Opinion Letter No. 193-90
Opinion Letter No. 42-86

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

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P. O. Box 899
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April 12, 1991

OPINION LETTER NO. 103-91

Bradford E. Ellsworth
Texas County Prosecuting Attorney
Texas County Courthouse Annex
116 East Main
Houston, Missouri 65483

Dear Mr. Ellsworth:

This opinion letter is in response to your question asking whether the Texas County Commission may compel the Texas County Sheriff to turn over daily log books to the county commission. We note that Texas County is a county of the third class.

Section 610.010(2), RSMo Supp. 1990, defines a "public governmental body," in part, as "any legislative, administrative governmental entity created by the constitution or statutes of this state. . . ." In Charlier v. Corum, 774 S.W.2d 518 (Mo. App. 1989), the court of appeals concluded that a county sheriff is a "public governmental body" as defined by Section 610.010(2), RSMo. The court opined:

> Unquestionably, the sheriff is an office created by § 57.010. The duties imposed upon the sheriff by § 57.100 relate to law enforcement and the execution of process directed to him by legal authority. It is clear that the sheriff is an administrative entity created by state statute.

Id., 774 S.W.2d at 520.

"[A]ny record retained by or of any public governmental body" is a "public record" as defined by Section 610.010(4), RSMo Supp. 1990. Pursuant to the public policy stated in Section 610.011, RSMo Supp. 1990, "all public records of public governmental bodies shall be open to the public for inspection and copying" except as otherwise provided by law.

Your opinion request does not state what matters are contained in the daily log book maintained by the sheriff. We note, as thoroughly discussed in Attorney General Opinion

Bradford E. Ellsworth

Letters Nos. 42-86 and 193-90, copies of which are enclosed, certain arrest records and investigative records are closed by law. In addition, records relating to juveniles are closed pursuant to provisions in Chapter 211, RSMo. We further note that Section 610.150, RSMo Supp. 1990, provides "[a]ny information acquired by a law enforcement agency by way of a complaint or report of a crime made by telephone contact using the emergency number, '911', shall be inaccessible to the general public."

To the extent the sheriff's daily log book contains matters that are closed by law, it should be considered a closed record. We find no provisions within the statutes of Missouri giving the county commission access to records closed pursuant to the provisions cited herein. This does not, however, lead to the conclusion that the county commission should be denied access to all of the daily log book.

Section 610.120.1, RSMo Supp. 1990, provides in part:

> All records which are closed records shall be removed from the records of the courts, administrative agencies, and law enforcement agencies which are available to the public and shall be kept in separate records which are to be held confidential and, where possible, pages of the public record shall be retyped or rewritten omitting those portions of the record which deal with the defendant's case. If retyping or rewriting is not feasible because of the permanent nature of the record books, such record entries shall be blacked out and recopied in a confidential book.

To the extent the daily log book contains matters closed by law, confidentiality of the closed records should be maintained in the manner provided in Section 610.120.1, RSMo Supp. 1990. The remainder of the daily log book, as a public record, should be made available to the county commission for inspection and copying.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion Letter No. 42-86
Opinion Letter No. 193-90

CANDIDATES:
ELECTIONS:
ELECTION OF SCHOOL CANDIDATES:
SCHOOLS:
SCHOOL BOARDS:
SCHOOL ELECTIONS:
WRITE-INS:

(1) If there are two positions to be filled at an election pursuant to Section 162.291, RSMo 1986, for members of the board of a six-director school district and only one candidate has filed, a write-in candidate is not required to file a declaration of intent as provided in Section 115.453(4), RSMo 1986, for his votes to be counted; and (2) in the circumstances described above, two undeclared write-in candidates can defeat the one candidate listed on the ballot if they receive the greater number of votes.

April 1, 1991

OPINION NO. 110-91

John T. Kay
Moniteau County Prosecuting Attorney
Moniteau County Courthouse
California, Missouri 65018

Dear Mr. Kay:

This opinion is in response to your questions asking:

(1) If there are two positions to be filled at an election for members of a six-director school district and only one candidate has filed, does a person wishing to be a write-in candidate need to file a declaration of intent as required in Section 115.453(4) or can he receive votes without such a declaration being filed?

(2) If your answer to the first question is that a person need not file a declaration of intent to become a write-in candidate in order to receive votes, can two undeclared write-in candidates defeat the one candidate listed on the ballot, or are the undeclared write-ins only eligible to receive votes for and be elected to

the second position for which no one filed?

Section 115.453(4), RSMo 1986, provides, in pertinent part, as follows:

> 115.453. Procedure for counting votes for candidates.--Election judges shall count votes for all candidates in the following manner:
>
> * * *
>
> (4) Write-in votes shall be counted only for candidates for election to office who have filed a declaration of intent to be a write-in candidate for election to office with the proper election authority prior to 5:00 p.m. on the second Friday immediately preceding the election day. . . . This subdivision shall not apply to elections wherein candidates are being elected to an office for which no candidate has filed.
>
> * * *

We assume that your questions refer to an election pursuant to Section 162.291, RSMo 1986, which provides as follows:

> 162.291. Directors--election--qualifications.--The voters of each six-director district other than urban districts shall, at municipal elections, elect two directors who are citizens of the United States and resident taxpayers of the district, who have resided in this state for one year next preceding their election or appointment, and who are at least twenty-four years of age.

This statute does not require candidates to declare for a particular position; rather, the two candidates receiving the greatest number of votes are elected as the two directors. This is in contrast to the requirements of Section 162.281, RSMo 1986, that ". . . when directors are to be elected for terms of different lengths, each candidate shall declare for a term of a specific number of years and the different terms shall be voted upon as separate propositions."

John T. Kay

In the situation described in your first question, only one candidate has filed for an election to fill two positions. Therefore, "candidates are being elected to an office for which no candidate has filed" within the meaning of the exception to the requirement of filing a "declaration of intent to be a write-in candidate" as set out in Section 115.453(4), RSMo 1986. We conclude that in the situation described in your first question, a person wishing to be a write-in candidate is not required to file a declaration of intent to be a write-in candidate in order for his votes to be counted.

Because of the conclusion reached in answer to your first question, it is necessary to address your second question asking whether two undeclared write-in candidates can defeat the one candidate listed on the ballot or if they are only eligible to be elected to the "second position for which no one filed."

In the scenario you have provided, "candidates are being elected to an office for which no candidate has filed." Section 115.453(4), RSMo 1986. However, because candidates do not declare under Section 162.291, RSMo 1986, for a particular position, it cannot be determined which office has no declared candidate.

"Election laws must be liberally construed in aid of the right of suffrage. . . . While mandatory statutory requirements must be followed, '[e]lections should be so held as to afford a free and fair expression of the popular will. . . .'" Kasten v. Guth, 375 S.W.2d 110, 113 (Mo. 1964), quoting State at Inf. McKittrick ex rel. Martin v. Stoner, 347 Mo. 242, 146 S.W.2d 891, 894 (Mo. 1941).

To conclude that the undeclared write-in candidates can only be considered for one of the two positions as director would mean that the declared candidate automatically is elected as a director, even if write-in candidates receive a greater number of votes. We believe such a result is contrary to the "free and fair expression of the popular will." Id. Therefore, we conclude the two undeclared write-in candidates can defeat the one candidate listed on the ballot if they receive the greater number of votes.

CONCLUSION

It is the opinion of this office that: (1) if there are two positions to be filled at an election pursuant to Section 162.291, RSMo 1986, for members of the board of a six-director school district and only one candidate has filed, a write-in candidate is not required to file a declaration of intent as

John T. Kay

provided in Section 115.453(4), RSMo 1986, for his votes to be counted; and (2) in the circumstances described above, two undeclared write-in candidates can defeat the one candidate listed on the ballot if they receive the greater number of votes.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ANNEXATION:
MILITARY INSTALLATIONS:
SCHOOLS:
SCHOOL AID:
SCHOOL ANNEXATION:

Pursuant to Section 162.071, RSMo 1986, a school district may annex "unorganized territory" consisting of a Federal military installation and such annexation does not render a school district ineligible for state aid under Section 163.021, RSMo Supp. 1990.

November 21, 1991

OPINION NO. 113-91

Dr. Robert E. Bartman
Commissioner of Education
Department of Elementary and Secondary Education
Post Office Box 480
Jefferson City, Missouri 65102

Dear Dr. Bartman:

This opinion is in response to your questions asking:

a. Does the term "[unorganized] territory" in Section 162.071, RSMo, include areas within the state that are under the exclusive legislative jurisdiction of the United States, such as military installations that are not presently part of a school district?

b. Since school districts may not lawfully tax the property of the United States Government, would annexation by a school district of adjoining land under the exclusive legislative jurisdiction of the United States, such as military installations that are not presently part of the school district, render that district ineligible for state aid assistance under Section 163.021, RSMo?

Section 162.071, RSMo 1986, provides in pertinent part:

> 162.071. Annexation of unorganized territory, when, procedure.--Whenever there is within the state any unorganized territory . . . any three voters of the

> unorganized territory . . . may call an election of the voters of the territory to be conducted by the election authority as provided by law to vote on the proposition of annexation to an adjoining school district. The proceedings shall thereafter be conducted as provided in section 162.441. . . .

Section 162.441, RSMo 1986, explains the procedure for submitting the question of annexation to the voters.

In the statement of facts accompanying your question, you relate:

> During a recent meeting of the Missouri Military Advisory Commission, representatives from Fort Leonard Wood and Whiteman Air Force Base discussed the fact that Missouri residents residing on those installations were not permitted to vote in school board elections of the adjoining school district, even though the school districts involved operate schools on those installations. This is because the school districts do not consider the territorial area comprising the installations to be part of the respective school districts. Missouri electors residing on Fort Leonard Wood and Whiteman Air Force Base are not entitled to vote pursuant to Section 162.291, RSMo, which requires voters for school board members to be residents of the district.
>
> The school districts involved are concerned that if the military installations are annexed, the districts could face the loss of state educational aid under Section 163.021, RSMo, which establishes mandatory prerequisites for receipt of state aid. Section 163.021(3), RSMo, requires the district to levy a property tax of at least $1.25 per $100 of assessed valuation of the district. However, states and their political subdivisions are prohibited under the United States Constitution from taxing property of the United States Government. At issue is whether the legal inability of

> school districts to assess a property tax against United States Government property--specifically, the land area of the military installations--will disqualify these districts from receiving state aid should the military installations be annexed to the district.

Consent to acquire land within the State of Missouri and exclusive jurisdiction over such lands is granted to the United States by Sections 12.030 and 12.040, RSMo 1986, which provide:

> 12.030. Consent given United States to acquire land by purchase or condemnation for certain purposes.--The consent of the state of Missouri is given, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, to the acquisition by the United States by purchase, condemnation, or otherwise, of any land in this state as sites for customhouses, courthouses, post offices, arsenals, forts and other needful buildings required for military purposes.
>
> 12.040. Exclusive jurisdiction ceded to United States--reserving right of taxation and right to serve processes.--Exclusive jurisdiction in and over any land acquired as set out in section 12.030 or otherwise lawfully acquired and held for any of the purposes set out in section 12.030 by the United States, is ceded to the United States for all purposes, saving and reserving, however, to the state of Missouri the right of taxation to the same extent and in the same manner as if this cession had not been made; and further saving and reserving to the state of Missouri the right to serve thereon any civil or criminal process issued under the authority of the state, in any action on account of rights acquired, obligations incurred, or crimes committed in this state, outside the boundaries of the land but the jurisdiction ceded to the United States continues no longer than the United States owns the land and uses the same for the purposes set out in section 12.030.

In Howard v. Commissioners of Sinking Fund of City of Louisville, 344 U.S. 624, 73 S.Ct. 465, 97 L.Ed. 617 (1953), the United States Supreme Court considered the question of whether the City of Louisville could annex federally-owned land on which a Naval Ordnance Plant was located. The Court held that Louisville was free to annex the property.

> When the United States, with the consent of Kentucky, acquired the property upon which the Ordnance Plant is located, the property did not cease to be a part of Kentucky. The geographical structure of Kentucky remained the same. In rearranging the structural divisions of the Commonwealth, in accordance with state law, the area became a part of the City of Louisville, just as it remained a part of the County of Jefferson and the Commonwealth of Kentucky.

Id., 344 U.S. at 626, 73 S.Ct. at 467, 97 L.Ed. at 620. Following the analysis of Howard, the Missouri Supreme Court upheld the annexation by the City of Kansas City of a portion of Richards-Gebaur Air Force Base. Kansas City v. Querry, 511 S.W.2d 790 (Mo. 1974). See also Attorney General Opinion No. 185, Price, 1963, a copy of which is enclosed, wherein we concluded:

> Persons living on Federal military bases located in the State of Missouri are residents of county library districts whose geographical boundaries include such Federal bases and such persons are to be counted in determining the population of such county library districts for ascertaining the amount of state aid the county library districts are entitled to receive and such persons are entitled to the services of the libraries established in such districts.

Just as the City of Louisville could annex federally-owned land on which a Naval Ordnance Plant was located and the City of Kansas City could annex a portion of Richards-Gebaur Air Force Base, we conclude that pursuant to Section 162.071, RSMo 1986, a school district may annex "unorganized territory" consisting of a Federal military installation.

Your second question asks whether inclusion in a school district of property of the United States that may not be taxed would render the district ineligible for state aid assistance

under Section 163.021, RSMo. Section 163.021, RSMo Supp. 1990, provides in pertinent part:

> 163.021. Eligibility for state aid--requirements.--A school district shall receive state aid for its education program only if it:
>
> * * *
>
> (3) Levies a property tax of not less than one dollar and twenty-five cents after all adjustments and reductions beginning with the tax year which commences January 1, 1989, for current school purposes on each one hundred dollars assessed valuation of the district;
>
> * * *

Article III, Section 43, of the Missouri Constitution provides in part: "No tax shall be imposed on lands the property of the United States . . . ." Therefore, the Federal military installation about which you are concerned is not subject to the property tax levied by the school district. Section 137.115, RSMo, requires the assessor of all counties and the City of St. Louis on an annual basis to "make a list of all real and tangible personal property taxable in his city, county, town or district" and to assess such property. Because the property of the United States is not taxable, it would not be included in determining the assessed valuation of the district and would not affect the computation of the permissible property tax rate. Therefore, annexation by a school district of land of the United States would not affect eligibility of the district for state aid pursuant to Section 163.021, RSMo Supp. 1990.

CONCLUSION

It is the opinion of this office that pursuant to Section 162.071, RSMo 1986, a school district may annex "unorganized territory" consisting of a Federal military installation and such annexation does not render a school district ineligible for state aid under Section 163.021, RSMo Supp. 1990.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 185, Price, 1963

ASSESSORS:
COUNTY RECORDS:
PROPERTY ASSESSMENT:
RECORDS:
SUNSHINE LAW:

Property record cards prepared and retained by a county assessor are public records as defined by Section 610.010(4), RSMo Supp. 1990, to be made available for inspection and copying as provided in Section 610.023, RSMo Supp. 1990.

May 16, 1991

OPINION NO. 117-91

The Honorable Dennis Ziegenhorn
Representative, District 157
State Capitol Building, Room 413B
Jefferson City, Missouri 65101

Dear Representative Ziegenhorn:

This opinion is in response to your question asking whether property record cards maintained by a county assessor's office are public records. A sample property record card is attached as Exhibit A.

It is our understanding that a property record card in the form of that attached as Exhibit A or a variation thereof is used by county assessors to assist them in performing the duties of their office. We find no statutes specifically requiring county assessors to keep property record cards.

Chapter 610, RSMo, is commonly referred to as the Sunshine Law. Section 610.010(2), RSMo Supp. 1990, defines a "public governmental body" as:

> 610.010. Definitions.--As used in sections 610.010 to 610.030 and 610.100 to 610.115, unless the context otherwise indicates, the following terms mean:
>
> * * *
>
> (2) "Public governmental body", any legislative, administrative governmental entity created by the constitution or statutes of this state, by order or ordinance of any political subdivision or

> district, or by executive order, including . . . .
>
> * * *

The office of county assessor is a "legislative, administrative governmental entity created by the constitution or statutes of this state" and is, therefore, a "public governmental body" as defined in Section 610.010(2). See Charlier v. Corum, 774 S.W.2d 518 (Mo. App. 1989) (A county sheriff is a public governmental body, because the office of sheriff is an administrative entity created by state statute.)

Section 610.010(4), RSMo Supp. 1990, defines a "public record" as follows:

> (4) "Public record", any record retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or in part by public funds; . . . .

A property record card prepared and retained by a county assessor is a "public record" as defined in Section 610.010(4).

All provisions within Chapter 610, RSMo, must be construed in accordance with the statement of public policy contained in Section 610.011, RSMo Supp. 1990:

> 610.011. Liberal construction of law to be public policy.--1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.028 shall be liberally construed and their exceptions strictly construed to promote this public policy.
>
> 2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in

> sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015.

Section 610.021, RSMo Supp. 1990, lists fifteen exceptions authorizing a public governmental body to close meetings, records and votes. No exception specifically relates to property record cards. Section 610.021(14), RSMo Supp. 1990, authorizes closure of "[r]ecords which are protected from disclosure by law." However, we find no provisions within Chapter 53, RSMo, relating to county assessors, which either require or allow closure of a property record card. Accordingly, we conclude that property record cards are public records to be made available for inspection and copying as provided in Section 610.023, RSMo Supp. 1990.

CONCLUSION

It is the opinion of this office that property record cards prepared and retained by a county assessor are public records as defined by Section 610.010(4), RSMo Supp. 1990, to be made available for inspection and copying as provided in Section 610.023, RSMo Supp. 1990.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Attachment: Exhibit A

COUNTY MO.

COUNTY NUMBER	MISSOURI UNIFORM PARCEL NUMBER					
	TWP	AREA	SEC.	1/4 SEC.	BLK.NO.	PARCEL NO.

ACCOUNT NUMBER	DIST.	DIST.	DIST.	CITY
	R			

LOT SIZE	ACREAGE	
	C	D

BRIEF LEGAL DESCRIPTION

CARD /

19__	IMP. VAL.	
	LAND VAL.	
	TOTAL VAL	
	ASSM'T. VAL	
19__	IMP. VAL.	
	LAND VAL.	
	TOTAL VAL	
	ASSM'T VAL	
19__	IMP. VAL	
	LAND VAL.	
	TOTAL VAL	
	ASSM'T VAL.	
19__	IMP. VAL.	
	LAND VAL.	
	TOTAL VAL.	
	ASSM'T VAL.	

OWNERS NAME	MAILING ADDRESS	DATE ACQ. MO.	DATE ACQ. YR.	CONSID.		DEED BOOK	PAGE NO.
		–					
		–					
		–					
		–					
		–					
		–					
		–					
		–					
		–					
		–					
		–					
		–					

NOTES

PROPERTY TYPE	
BUILDING PERMITS - CONST CODE	
AGRICULTURAL USE VALUE	
___ AC CL ___ X ___ =	
___ AC CL ___ X ___ =	
___ AC CL ___ X ___ =	
___ AC CL ___ X ___ =	
___ AC CL ___ X ___ =	
___ AC CL ___ X ___ =	
___ AC CL ___ X ___ =	
___ AC CL ___ X ___ =	
TOTAL AGR. VALUE	

UTILITIES	E W S G ALL
ROADS	P G D O
TOPO.	LEV. ROLL. STP. LOW HI
ZONING	

RENTAL INFORMATION

LAND COMPUTATIONS

Quantity - Type - Desc	FF	– DEPTH	Unit Price	D.F.	± A.F.	Adj. Front Foot Price	Value
LAND APPRAISED BY			PROC. BY		LAND T.A.F.		

EXHIBIT A

COUNTY MO.

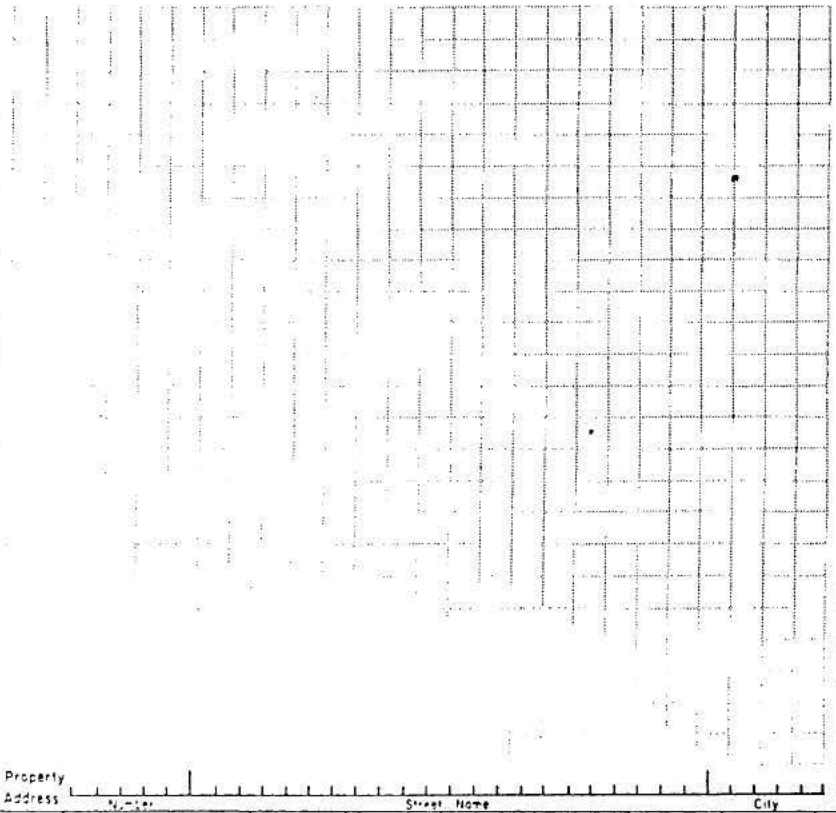
Improvement No	1		2		3		4		5		6		7	
	Code	Description			Code	Description	Code	Description	Code	Description	Code	Description	Code	Description
Type of Structure														
Year Built														
Rem														
Effective Age														

Information By: Owner ☐ Mgr ☐
Other:
Name:

Field Work By No	Date: / /	TIME
Class By No	Date: / /	
Review By No	Date: / /	

Building No	1	1	1	2	2	2	3	3	3	4	4	4	Rents
No of Apts.													
No of Rooms													
No of Bed Rms													
Stories													

Name of Property:



CONSTRUCTION DATA

Code	Description	Unit	1	2	3	4
	FOUNDATION					
1	Slab					
2	Piers					
3	Cont. Wall					
4	Conc. Block					
5	Brick					
6	Concrete					
7	Stone					
8	Wood					
	EXTERIOR WALLS					
1	Wall Board	15				
2	Composition	15				
3	Sheet Metal	16				
4	Wood Fr. Asb.	30				
5	Wd. Fr. Stucco	28				
6	Wd. Fr. No Sh.	30				
7	C. B. Plain	31				
9	C. B. Stucco	33				
11	Wd. Sheathing	33				
12	Brick On Wd.	38				
13	Brick On Msny	38				
14	8" Brick	38				
15	12" Brick	41				
16	Reinf. Conc.	43				
21	Ext. Plywood	30				
22	Ext. Hdbd. Pnl.	30				
23	C. B&B	43				
27	Aluminum	33				
32	Hardboard Lap	33				
33	Vinyl	33				
34	Permastone	38				
35	Prestressed T.	40				
37	Wood Sh.	45				
	ROOF TYPE					
1	Flat Shed	7				
2	Hip	8				
3	Cable	8				
4	Sawtooth	8				
5	Gambrel	9				
6	Mansard	9				
7	Monitor	9				
8	Pre-Stress Conc.	10				
9	Wd Tr Wd Dk	13				
10	B J. B Rigid Ins.	14				
13	Stl Truss Rgin.	23				
14	Stl Truss Pr Dk.	26				
15	B.J.&Wd. Deck	8				

Code	Description	Unit	1	2	3	4
	ROOF MATERIAL					
1	Sheet Metal	2				
2	Roll Comp.	2				
3	B.U./ T. & G.	3				
4	Shingle, Asp.	4				
5	Shingle, Asb.	5				
6	Cement Tile	6				
7	Clay Tile	7				
9	Slate	11				
10	Corr. Asb.	8				
11	Enam. Metal	8				
12	Wood Shingles	6				
13	Wood Shakes	8				
	FLOORS					
1	Plywood	3				
2	S. Pine	5				
3	Conc. On Grade	6				
4	Conc. & Tile	7				
5	Conc. Raised	8				
6	Terrazzo	9				
7	D. Pine	10				
8	Hardwood	12				
9	Pre. Cst. Conc.	12				
10	Parquet	15				
11	Quarry Tile	17				
12	Ceramic Tile	17				
13	Marble	24				
14	Carpet & U.	12				
21	Earth	0				
22	Torginol	9				
23	S.P. & A. Tile	6				
	INTERIOR FINISH					
1	Unfinished	0				
2	Painted	5				
3	Wd. or Ceil. Bd.	15				
4	Wall Board	18				
5	Plaster No Furr	24				
6	Plaster & Furr	30				
7	Drywall	30				
8	Wood Panel	35				
15	Av. Ply. Panel	24				
16	Good Ply. Panel	30				
17	Acc. Ceil	30				
18	Susp. Ceil	34				

Code	Description	Unit	1	2	3	4
	ADJUSTMENTS					
1	Apt Equiv					
2	Special Use					
3	Height					
4	Partitions					
5	Front / Int					
6	Fr. Timber					
7	Fr Open Steel					
8	Fr Reinf Conc					
9	Fr. Fire Proof St					
10	Shape / Design					
	ELECTRICITY					
1	None	0				
2	Minimum	1				
3	Average	3				
4	Maximum	5				
	PLUMBING					
1	None	0				
2	Poor	5				
3	Avg.	8				
4	Good	11				
5	Exc.	14				

EXTRA FEATURES

	Plumbing	No	Amt	No	Amt	No	Amt	No	Amt
1	2 Fix Avg								
2	3 Fix Avg								
3	4 Fix Avg								
4	2 Fix Good								
5	3 Fix Good								
6	4 Fix Good								
7	2 Fix Exc								
8	3 Fix Exc.								
9	4 Fix Exc								

	Heat - Air Cond	Std	Amt	Std	Amt	Std	Amt	Std	Amt
0	None								
2	Gravity								
10	FHA								
14	FHA & AC								
18	Hot Water								
29	FP + __ / __								
	TOTAL								
	X INDEX=								

CONDITION ADJUSTMENT

Imp No	Phy	Adjustment	± %	Adjusted

Bldg	Improvement	Class Scale	Class Units	Const Units	Total Units	Base Rate	Adj. Rate	Index	Sq Ft Cost	Base Area	Adjusted Area	Base Cost	Extra Features	Replacement Cost	Condition Phys	Condition Adjusted	Value
1																	
2																	
3																	
4																	
5																	
6																	
7																	

STC-251

DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION:
HIGHER EDUCATION, DEPARTMENT OF:
STATE EMPLOYEES:

Employees of the Department of Elementary and Secondary Education and employees of the Department of Higher Education are included within the operation of Section 36.031, RSMo Supp. 1990, and are subject to the uniform classification and pay provisions in Sections 36.100, 36.110, 36.120 and 36.130, RSMo 1986, and the regulations adopted thereunder, except for 1) employees holding those positions specified in subsection 1 of Section 36.030, RSMo Supp. 1990; however, attorneys regularly employed or appointed are not excepted pursuant to this exception, and 2) professional staff of the Department of Elementary and Secondary Education appointed by the State Board of Education pursuant to Article IX, Section 2(b) of the Missouri Constitution.

November 21, 1991

OPINION NO. 120-91

James R. Moody, Commissioner
Office of Administration
State Capitol Building, Room 125
Jefferson City, Missouri 65101

Dear Commissioner Moody:

This opinion is in response to your questions asking:

> Are the employees of the Department of Elementary and Secondary Education included within the uniform classification and pay provisions of section 36.031 RSMo Cum. Supp 1990? Is there a distinction between professional and non-professional employees of that department for purposes of application of section 36.031?
>
> Are the employees of the Department of Higher Education included within the uniform classification and pay provisions of section 36.031 RSMo Cum. Supp 1990?

Section 36.031, RSMo Supp. 1990, to which your questions relate, provides as follows:

James R. Moody, Commissioner

> 36.031. Applicability of merit system--director of personnel to notify affected agencies.--Any provision of law to the contrary notwithstanding, except for the elective offices, institutions of higher learning, the department of highways and transportation, the department of conservation, those positions in the Missouri state highway patrol the compensation of which is established by sections 43.070 and 43.080, RSMo, those positions for which the constitution specifically provides the method of selection, classification, or compensation, and the positions specified in subsection 1 of this section,[1] but including attorneys, those departments, agencies and positions of the executive branch of state government which have not been subject to these provisions of the state personnel law shall after July 1, 1991, be subject to the provisions of sections 36.100, 36.110, 36.120 and 36.130, and the regulations adopted under sections 36.100, 36.110, 36.120 and 36.130, which relate to the preparation, adoption and maintenance of a position classification plan, the establishment and allocation of positions within the classification plan and the use of appropriate class titles in official records, vouchers, payrolls and communications. Any provision of law which

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[1]The Revisor of Statutes posits that the words "this section" apparently refer to Section 36.030, RSMo Supp. 1990. We agree. In construing a statute, an accepted canon of construction permits and often requires an examination of the historical development of the legislation including changes therein and in so doing resort may be had to the original bill and amendments. State ex rel. Missouri Power & Light Company v. Riley, 546 S.W.2d 792, 797 (Mo. App. 1977). The section now numbered Section 36.031 was enacted by Senate Substitute for House Bill No. 1452, 85th General Assembly, Second Regular Session (1990). House Bill No. 1452 as initially introduced only pertained to Section 36.030.

confers upon any official or agency subject to the provisions of this subsection the authority to appoint, classify or establish compensation for employees shall mean the exercise of such authority subject to the provisions of this subsection. This subsection shall not extend coverage of any section of chapter 36, except those specifically named in this subsection, to any agency or employee. In accordance with sections 36.100, 36.110, 36.120 and 36.130, and after consultation with appointing authorities, the director of the personnel division shall conduct such job studies and job reviews and establish such additional new and revised job classes as he finds necessary for appropriate classification of the positions involved. Such classifications and the allocation of positions to classes shall be established as soon as practicable but not later than December 31, 1994, and shall be maintained thereafter on a current basis by the personnel division. The director of the personnel division shall, at the same time, notify all affected agencies of the appropriate assignment of each job classification to one of the salary ranges within the pay plan then applicable to merit system agencies. Not later than July 1, 1996, and thereafter, the affected agencies and employees in the classifications set under this subsection shall be subject to the pay plan and rates of compensation established and administered in accordance with the provisions of this section, and the regulations adopted under this section, on the same basis as for merit agency employees. In addition, any elected official, institution of higher learning, the department of highways and transportation, the department of conservation, the general assembly, or any judge who is the chief administrative officer of the judicial branch of state government may request the division of personnel to study salaries within the requestor's office, department or branch of

state government for classification purposes.

The purpose and effect of Section 36.031 is to extend certain provisions of The State Personnel Law, Chapter 36, RSMo, to those departments, agencies and positions in the executive branch of state government which had not been subject to such provisions before July 1, 1991, subject to certain exceptions hereafter noted.

Specifically, Section 36.031 makes applicable to various "non-merit" departments, agencies and positions those provisions in Sections 36.100, 36.110, 36.120 and 36.130, RSMo 1986, and the regulations adopted thereunder, "which relate to the preparation, adoption and maintenance of a position classification plan, the establishment and allocation of positions within the classification plan and the use of appropriate class titles in official records, vouchers, payrolls and communications."

Several departments and agencies within the executive branch are excepted from the operation of Section 36.031. The excepted departments and agencies as specified in Section 36.031 are:

1. the elective offices;
2. institutions of higher learning;
3. the Department of Highways and Transportation; and
4. the Department of Conservation.

The Department of Elementary and Secondary Education and the Department of Higher Education are not among the departments and agencies specified in Section 36.031 as being excepted from the operation of such section.

Certain positions within the executive branch are also excepted from the operation of Section 36.031. The excepted positions as specified in Section 36.031 are:

1. those positions in the Missouri State Highway Patrol the compensation of which is established by Sections 43.070 and 43.080, RSMo;

2. those positions for which the Missouri Constitution specifically provides the method of selection, classification, or compensation; and

3. the positions specified in subsection 1 of Section 36.030, RSMo Supp. 1990, but including attorneys.

The first exception for certain positions in the Missouri State Highway Patrol is not applicable to positions in either the Department of Elementary and Secondary Education or the Department of Higher Education. Regarding the third exception listed above, within the Department of Elementary and Secondary Education and the Department of Higher Education there are positions that are excepted from the operation of Section 36.031 because they are positions specified in subsection 1 of Section 36.030. Even though subsection 1(4) of Section 36.030, RSMo Supp. 1990, provides an exception for attorneys regularly employed by or appointed by any department or division, Section 36.031 by its express terms says attorneys excluded by subsection 1 of Section 36.030 are to be included. Therefore, the third exception for positions specified in subsection 1 of Section 36.030 would apply to certain employees of the Department of Elementary and Secondary Education and the Department of Higher Education; however, attorneys regularly employed or appointed are not excepted under this third exception.

The question remains whether there are any other positions within the Department of Elementary and Secondary Education or the Department of Higher Education that are excepted from the operation of Section 36.031 because they are "positions for which the constitution specifically provides the method of selection, classification, or compensation," the second exception listed above.

The Missouri Constitution contains two provisions that touch upon the "selection, classification, or compensation" of executive branch employees who occupy positions that are not (or may not be) specified in subsection 1 of Section 36.030.

Article IV, Section 19, states in relevant part: "The head of each department may select . . . all appointees in the department except as otherwise provided in this constitution, or by law." We conclude that Article IV, Section 19, does not "specifically [provide] the method of selection, classification, or compensation" for executive branch positions within the second exception listed above. To conclude otherwise would extend the second exception to all appointees selected by the head of each department sought be included under Section 36.031, and would effectively nullify Section 36.031. It is well established that the presumption is the legislature did not intend for any part of a statute to be without meaning or

effect. Stiffelman v. Abrams, 655 S.W.2d 522, 531 (Mo. banc 1983).

Article IX, Section 2(b) of the Missouri Constitution provides:

> Section 2(b). Commissioner of education--qualification, duties and compensation--appointment and compensation of professional staff--powers and duties of state board of education. The board shall select and appoint a commissioner of education as its chief administrative officer, who shall be a citizen and resident of the state, and removable at its discretion. The board shall prescribe his duties and fix his compensation, and upon his recommendation shall appoint the professional staff and fix their compensation. The board shall succeed the state board of education heretofore established, with all its powers and duties, and shall have such other powers and duties as may be prescribed by law.

This section does provide a method for appointment of professional staff of the Department of Elementary and Secondary Education and provides the State Board of Education shall fix their compensation. Because of this constitutional provision, we conclude the professional staff selected pursuant to Article IX, Section 2(b) is excepted from the operation of Section 36.031 under the second exception listed above.

In summary, the Department of Elementary and Secondary Education and the Department of Higher Education are not among the departments and agencies excepted from the operation of Section 36.031. The only positions within those two departments excepted from the operation of Section 36.031 are: 1) the positions specified in subsection 1 of Section 36.030; however, attorneys regularly employed or appointed are not excepted pursuant to this exception, and 2) professional staff of the Department of Elementary and Secondary Education appointed by the State Board of Education pursuant to Article IX, Section 2(b) of the Missouri Constitution.

James R. Moody, Commissioner

CONCLUSION

It is the opinion of this office that employees of the Department of Elementary and Secondary Education and employees of the Department of Higher Education are included within the operation of Section 36.031, RSMo Supp. 1990, and are subject to the uniform classification and pay provisions in Sections 36.100, 36.110, 36.120 and 36.130, RSMo 1986, and the regulations adopted thereunder, except for 1) employees holding those positions specified in subsection 1 of Section 36.030, RSMo Supp. 1990; however, attorneys regularly employed or appointed are not excepted pursuant to this exception, and 2) professional staff of the Department of Elementary and Secondary Education appointed by the State Board of Education pursuant to Article IX, Section 2(b) of the Missouri Constitution.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ASSESSORS:
COUNTIES:
COUNTY BUDGET:

A county commission of a third class county is not authorized under Section 137.720, RSMo Supp. 1990, or The County Budget Law, Sections 50.525 to 50.745, RSMo 1986, to designate a portion of the funds included in the budget for the assessment fund as "contingent funds," contingent upon the assessor, six months into the fiscal year, justifying to the county commission his need for those funds.

December 10, 1991

OPINION NO. 121-91

The Honorable Jerry T. Howard
Senator, District 25
State Capitol Building, Room 428A
Jefferson City, Missouri 65101

Dear Senator Howard:

This opinion is in response to your question asking:

> Does a County Commission of a third class county comply with requirements of Section 137.720, RSMo (Supp. 1990) and thereby qualify for state reimbursement funds when it deposits in the assessment fund an amount equal to the amount of moneys available for assessment purposes in the previous year, when a portion of the deposited funds are designated as "contingent fund" and the spending thereof is contingent upon the assessor, six months into the fiscal year, justifying to the county commission his need for those funds?

Section 137.720, RSMo Supp. 1990, provides:

> 137.720. Percentage of ad valorem property tax collections to be deducted for deposit in county assessment fund.--A percentage of all ad valorem property tax collections allocable to each taxing authority within the county and the county shall be deducted from the collections of taxes each year and shall be deposited into the assessment fund of the county as

> required under section 137.750. The percentage shall be one-half of one percent for all counties of the first and second class and cities not within a county and one percent for counties of the third and fourth class. The county shall bill any taxing authority collecting its own taxes. The county may also provide additional moneys for the fund. To be eligible for state cost-share funds provided under section 137.750, every county shall provide all moneys necessary to assure that the fund is at least equal to the amount of moneys available for assessment purposes in the previous year, except that a lesser amount shall be acceptable if unanimously agreed upon by the county assessor, county governing body and the state tax commission. The county shall deposit the county general revenue funds in the assessment fund as agreed to in its original or amended maintenance plan, state reimbursement funds shall be withheld until the amount due is properly deposited in such fund.

Sections 50.525 to 50.745, RSMo 1986, comprise The County Budget Law. We find no authority for a county commission to designate a "contingent fund" as a part of the budget for the county assessor's office.

We note that in the facts underlying your question, you explain that the "contingent fund" is the result of a controversy concerning "whether or not one of the clerk positions in the assessor's office is necessary." In State ex rel. Lack v. Melton, 692 S.W.2d 302 (Mo. banc 1985), the Dade County Commission had approved a budget for the county assessor's office. "That budget did not specify specific salaries, employees or number of employees." Id., 692 S.W.2d at 305. Later, a controversy erupted between the commission and the assessor with the commission arguing it must specifically approve each person hired by the assessor's office. The court agreed with the assessor that "the commission is authorized to approve a total budget for his office but . . . he [the assessor] has the final decision concerning who is employed in his office. Id., 692 S.W.2d at 304.

In Attorney General Opinion Letter No. 242, Peterson, 1980, a copy of which is enclosed, we interpreted an earlier version

of Sections 137.715 to 137.725, RSMo. We stated: "The county court must budget the funds necessary to carry out the approved plan, and if such funds are not actually budgeted by the county court, they are budgeted as a matter of law. State ex rel. Robb v. Poelker, 515 S.W.2d 577 (Mo.Banc 1974)."

CONCLUSION

It is the opinion of this office that a county commission of a third class county is not authorized under Section 137.720, RSMo Supp. 1990, or The County Budget Law, Sections 50.525 to 50.745, RSMo 1986, to designate a portion of the funds included in the budget for the assessment fund as "contingent funds," contingent upon the assessor, six months into the fiscal year, justifying to the county commission his need for those funds.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 242, Peterson, 1980

HANCOCK AMENDMENT:
POLITICAL SUBDIVISIONS:

The revenue-raising authority of subdivision trustees is not limited by Article X, Section 22 of the Missouri Constitution.

September 10, 1991

OPINION NO. 125-91

The Honorable Wayne Goode
Senator, District 13
State Capitol Building, Room 334
Jefferson City, Missouri 65101

Dear Senator Goode:

This opinion is in response to your question asking:

> When a subdivision has been established within a city to provide certain governmental functions that may otherwise be provided by the city had the subdivision not been established and are, in fact, being provided by the city to other areas of that city where a subdivision is not in place, is the revenue raising authority of the subdivision trustees limited by Article 10, Section 22 of the constitution?

You have provided the following facts as being relevant to your question:

> A subdivision was established by the original lot owners of an area within a city. The subdivision indenture authorizes the trustees to assess a 50 cent per front foot assessment. It also authorizes additional assessments for specific purposes such as street improvements and care of subdivision owned property. The subdivision indenture provides further that the 50 cent per front foot annual assessment can be increased by a 2/3 vote of the trustees. The trustees have

increased the assessment without voter approval.

Article X, Section 22 of the Missouri Constitution, which was adopted as part of what is commonly referred to as the Hancock Amendment, provides:

> Section 22. Political subdivisions to receive voter approval for increases in taxes and fees--rollbacks may be required--limitation not applicable to taxes for bonds. (a). Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon. If the definition of the base of an existing tax, license or fees, is broadened, the maximum authorized current levy of taxation on the new base in each county or other political subdivision shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.
>
> (b) The limitations of this section shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidence of indebtedness or for

> the payment of assessments on contract obligations in anticipation of which bonds are issued which were authorized prior to the effective date of this section. [Emphasis added.]

Article X, Section 15 of the Missouri Constitution defines "other political subdivision" as follows:

> Section 15. Definition of "other political subdivision". The term "other political subdivision," as used in this article, shall be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax.

In discussing the power to tax, Article X, Section 1 of the Missouri Constitution states:

> Section 1. Taxing power--exercise by state and local governments. The taxing power may be exercised by the general assembly for state purposes, and by counties and other political subdivisions under power granted to them by the general assembly for county, municipal and other corporate purposes.

A subdivision trust has no power to tax granted by the General Assembly. Therefore, the subdivision trust is not a political subdivision as defined in Article X, Section 15.

In Attorney General Opinion Letter No. 25-87, a copy of which is enclosed, we concluded that a subdivision trust Board of Trustees is not a public governmental body as defined in Chapter 610, RSMo, the Sunshine Law. The analysis in Opinion Letter No. 25-87 also leads to the conclusion that a subdivision trust is not a political subdivision.

Because Article X, Section 22 only applies to counties or other political subdivisions and because a subdivision trust is not a county or other political subdivision, Article X, Section 22 does not apply to the subdivision trust. Therefore, the revenue-raising authority of subdivision trustees is not limited by Article X, Section 22 of the Missouri Constitution.

CONCLUSION

It is the opinion of this office that the revenue-raising authority of subdivision trustees is not limited by Article X, Section 22 of the Missouri Constitution.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 25-87

BALLOTS:
COUNTIES:
COUNTY ELECTIONS:
COUNTY JAIL:
ELECTION BALLOTS:
ELECTIONS:
JAILS:

1) A county commission is not authorized to conduct an advisory election on the question of whether the county jail should be expanded and public funds expended for the construction of an addition to the county jail, and 2) if such an election has been held, its result is not binding on the county commission.

August 5, 1991

OPINION NO. 129-91

Terry R. Rottler
Ste. Genevieve County Prosecuting Attorney
296 Market Street
Ste. Genevieve, Missouri 63670

Dear Mr. Rottler:

This opinion is in response to your questions asking:

> Can a county government conduct an advisory election submitting to the voters of the county a question of whether the county jail should be expanded and public funds expended for the construction of an addition to said structure?
>
> If such an election has been conducted, what impact, if any, do the results have on the decision making authority of the county commission and county government regarding this particular issue?

Enclosed herein is a copy of Missouri Attorney General Opinion No. 478, Weier, 1969; a copy of Missouri Attorney General Opinion Letter No. 111, Harper, 1978; a copy of Missouri Attorney General Opinion No. 204-87; and a copy of Missouri Attorney General Opinion No. 85-91. As discussed in these opinions, the county commission can only place a proposition on the ballot when so authorized by law. A review of the applicable statutes does not reveal any law authorizing a county commission to call an advisory election submitting to the voters

of the county a question of whether the county jail should be expanded and public funds expended for the construction of an addition to said structure. Therefore, the county commission is not authorized to conduct such an advisory election.

When a county commission acts without authority, the action taken can be declared void by the courts. See American Aberdeen Angus v. Stanton, 762 S.W.2d 501, 503 (Mo. App. 1988); Lancaster v. County of Atchison, 180 S.W.2d 706, 708 (Mo. banc 1944). We have found no Missouri authorities addressing the effects of an election as described in your question. However, we note that even in an instance where such an advisory election is authorized by law, the result has been held to be directory, not mandatory. See City of Litchfield v. Hart, 306 Ill. App. 621, 29 N.E.2d 678, 679 (1940). Therefore, if such an election as discussed in your question has been held, the result is not binding on the county commission.

CONCLUSION

It is the opinion of this office that: 1) a county commission is not authorized to conduct an advisory election on the question of whether the county jail should be expanded and public funds expended for the construction of an addition to the county jail, and 2) if such an election has been held, its result is not binding on the county commission.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Opinions: Opinion No. 478, Weier, 1969
Opinion Letter No. 111, Harper, 1978
Opinion No. 204-87
Opinion No. 85-91

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

December 30, 1991

OPINION LETTER NO. 136-91

Michael W. Bradley
Carroll County Prosecuting Attorney
Carroll County Courthouse
Carrollton, Missouri 64633

Dear Mr. Bradley:

This opinion letter is in response to your question asking:

> Is a treasurer ex officio collector in a county of the third class entitled to compensation in excess of the schedule set out in section 54.320, RSMo Supp. 1990, when said treasurer may have been entitled to compensation in excess of the limit as set out in section 54.320, RSMo 1986, but did not receive an amount in excess of the limit for the period beginning March 1, 1987, and ending February 29, 1988, because the treasurer paid the excess amount into the General Revenue Fund?

In the statement of facts accompanying your question, you state:

> For the year ending February 29, [1988], the total amount of taxes levied exceeded four million dollars. The Treasurer Ex Officio Collector did not realize this and paid the amount of fees in excess of the $10,000 limit, set out in section 54.320, RSMo 1986, to the county General Revenue Fund.
>
> After the State Auditor's report, . . . it was discovered that the four million dollar limit was exceeded.

> At that point discussions began concerning the possibility of back pay being owed and that the amount of current pay being greater than the schedule set out in section 54.320, RSMo Supp. 1990.
>
> The treasurer has only received the $10,000 amount for the year ending February 29, 1988 and has received the salary as set out in the schedule in section 54.320, RSMo Supp. 1990, since that date.

Answering your question requires examination of Section 54.320, RSMo 1986, and subsequent changes in such section. Section 54.320, RSMo 1986, was the law regarding compensation of the treasurer ex officio collector until January 1, 1988. Section 54.320, RSMo 1986, provided in pertinent part:

> 54.320. County treasurer compensation, limit on (township organization counties).--The county treasurer in counties of the third and fourth classes adopting township organizations shall be allowed a salary of not less than one hundred dollars per month by the county commission to be paid as at present provided by law; the ex officio collector shall be allowed a commission of three percent on all licenses, and all taxes, including current taxes, back taxes, and delinquent taxes, collected by him, to be deducted from the taxes collected; and additionally, the ex officio collector shall be allowed a commission of two percent on all back taxes and all delinquent taxes collected by him, which shall be taxed as costs against the persons or entities owing such taxes and collected as other taxes; . . . . Other provisions of law to the contrary notwithstanding, the total compensation of ex officio collectors shall not exceed the sum of ten thousand dollars annually; . . . except that, the maximum compensation herein provided shall not be applicable to ex officio collectors in counties wherein the total amount levied for any one year exceeds four million dollars. . . . All fees or commissions

> received by the ex officio collector in excess of the maximum amounts provided herein to be retained as compensation shall be paid into the county treasury. [Emphasis added.]

Section 54.320, RSMo 1986, was amended effective January 1, 1988, by Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 65, 133, 178, 216 and 231, 84th General Assembly, First Regular Session (1987)(hereinafter referred to as "Senate Bill No. 65"). Section 54.320, as enacted by Senate Bill No. 65, provided in pertinent part:

> 54.320. Treasurer, ex officio collector, compensation--commissions--deputies and assistants, compensation--fees (township counties).--1. The county treasurer ex officio collector in counties of the third and fourth classes adopting township organizations shall receive an annual salary computed on an assessed valuation basis as set forth in the following schedule. Except as provided in section 7 of this act, the amount provided by this section shall be the total compensation for all services performed by such treasurer ex officio collector. The assessed valuation factor shall be the amount thereof as shown for the year next preceding the computation. <u>The provisions of this section shall not permit or require a reduction in the amount of compensation received by any person holding the office of treasurer ex officio collector on the effective date of this section</u>. [Emphasis added.]

* * *

Section 54.320, as enacted by Senate Bill No. 65, was amended effective May 13, 1988, by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 431, 84th General Assembly, Second Regular Session (1988)(hereinafter referred to as "Senate Bill No. 431").

Section 54.320, as enacted by Senate Bill No. 431, provided in pertinent part:

Michael W. Bradley

> 54.320. Treasurer, ex officio collector, compensation--commissions--deputies and assistants, compensation--training program, attendance required, expenses, compensation (township counties).--1. The county treasurer ex officio collector in counties of the third and fourth classes adopting township organizations shall receive an annual salary as set forth in the following schedule. The population factor shall be as disclosed by the last preceding federal decennial census and the assessed valuation factor shall be the amount thereof as shown for the year next preceding the computation. A county treasurer ex officio collector subject to the provisions of this section shall not, except upon two-thirds vote of all the members of the salary commission, receive an annual compensation less than the total compensation being received by the county treasurer ex officio collector in that county for services rendered or performed for the period beginning March 1, 1987, and ending February 29, 1988, unless such total compensation paid exceeds the maximum compensation allowable for the office of county treasurer ex officio collector in such county under the provisions of this section. . . . [Emphasis added.]
>
> * * *

Section 54.320 was again amended in 1990 by Senate Substitute for House Bill No. 1452, 85th General Assembly, Second Regular Session (hereinafter referred to as "House Bill No. 1452"); however, the provisions of Section 54.320 as quoted above to be considered in addressing your question remained the same as enacted by Senate Bill No. 431.

"[I]t is well-settled law that a right to compensation for the discharge of official duties is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed." State ex rel. Linn County v. Adams, 172 Mo. 1, 72 S.W.2d 655, 656 (Mo. 1903). See also Ward v. Christian County, 111 S.W.2d 182, 183 (Mo. 1937). Section 54.320, RSMo 1986, specifically allowed the treasurer ex officio collector in a third class county adopting township

organizations the commissions provided by law without limitation if the total amount levied exceeded four million dollars. In the circumstances described in your request, the treasurer ex officio collector was entitled by law to keep the commissions she erroneously paid into the General Revenue Fund. To permit public officials elected or appointed to receive by agreement or otherwise a less compensation for their services than fixed by law would be contrary to the public policy of the state. Reed v. Jackson County, 142 S.W.2d 862, 865 (Mo. 1940). Therefore, we conclude that the treasurer ex officio collector is entitled to the compensation provided by statute for the period beginning March 1, 1987, and ending February 29, 1988.

Section 54.320, as enacted by Senate Bill No. 65, specifically stated that the provisions of Section 54.320, effective January 1, 1988, "shall not permit or require a reduction in the amount of compensation received by any person holding the office of treasurer ex officio collector on the effective date of this section." Section 54.320, as enacted by Senate Bill No. 431 and House Bill No. 1452, provides that the treasurer ex officio collector "shall not, except . . . , receive an annual compensation less than the total compensation being received by the county treasurer ex officio collector in that county for services rendered or performed for the period beginning March 1, 1987, and ending February 29, 1988. . . ." From the information you have provided, we understand the basis for the compensation of the treasurer ex officio collector should have been the commissions for the year beginning March 1, 1987, and ending February 29, 1988, because the salary schedule adopted by Senate Bill No. 65 would have resulted in "a reduction in the amount of compensation" which was expressly prohibited. Therefore, we conclude that until such time as the exceptions and adjustments in Section 54.320 become applicable, the compensation of the treasurer ex officio collector shall not be less than the compensation to which the county treasurer ex officio collector was entitled for the period beginning March 1, 1987, and ending February 29, 1988.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

December 30, 1991

OPINION LETTER NO. 144-91

Bob Oberzalek
Shannon County Prosecuting Attorney
Post Office Box 429
Eminence, Missouri 65466

Dear Mr. Oberzalek:

This opinion letter is in response to your question asking:

> If the Winona and Eminence districts roll back their local salary schedules in a manner equally applicable to all teachers and not to exceed the amount of loss produced by State Minimum Guarantee and to include any possible new revenues from federal, state, or local monies for teachers salaries, will both of these districts still retain eligibility to participate in the Minimum Salary Program outlined in 163.172?

Along with your question you state:

> . . . At present, both schools [have] a base schedule of approximately $15,000 and receive teacher salary supplements as mandated under 163.172.
>
> Both school districts have been advised by the State Department of Elementary and Secondary Education that there will be a 3% reduction in State Aid (Minimum Guarantee) for the 1991-1992 school year. This reduction will cause Winona R-III to lose ($21,000 approximately) and Eminence R-I to lose ($17,500 approximately) based on a stable enrollment.

> Neither schools have additional revenues from federal, state or local sources to offset this loss, nor any anticipated.
>
> Each school proposes to roll back their district schedule in a manner equally applicable to all teachers. . . .

The Minimum Guarantee referred to in your question and the accompanying statement of facts is provided for in Section 163.031, RSMo 1986, which states in part:

> 163.031. Minimum aid--amount, how determined--source of funds, how spent.--1. School districts which meet the requirements of section 163.021 shall be entitled to a minimum guarantee computed as follows: An amount determined by multiplying the number of eligible pupils by seventy-five percent of the state-expenditure factor, plus an amount determined by multiplying the number of qualified aid to dependent children recipients and orphans by twenty-five percent and multiplying the product thereof by seventy-five percent of the state-expenditure factor.
>
> 2. From the minimum guarantee for each district there shall be deducted an amount derived by multiplying fifty-seven percent of the pupil-weighted levy as adjusted by the district income factor by each one hundred dollars of the equalized assessed valuation of the property in the district the preceding year. Also, there shall be deducted fifty-seven percent of the amount received for school purposes from fines, forfeitures, escheats and intangible taxes.
>
> 3. To the amount calculated in subsections 1 and 2 of this section shall be added an amount to which a district is eligible under the guaranteed-tax-base provision which shall be calculated as follows: Multiply the difference between the guaranteed tax base less the equalized assessed valuation per eligible pupil of

the school district for the last year divided by one hundred times the number of eligible pupils, times the difference obtained by subtracting fifty-seven percent of the equalized pupil-weighted levy as adjusted by the district income factor from the equalized operating levy for the district.

4. The sum determined in subsection 3 of this section shall be multiplied by the cost of education index for each school district as determined by the department of elementary and secondary education. The amount of money allocated pursuant to the cost of education index in any subsequent year will equal the ratio existing between the moneys allocated pursuant to the cost of education index and the total amount of moneys as if distributed pursuant to this section in the first year the cost of education index is applied.

5. No district shall receive annually an amount per eligible pupil which is greater than the amount received the previous year plus twenty-five percent of the difference between the amount currently apportioned per eligible pupil under subsections 1, 2, 3, and 4 and the amount per eligible pupil received the previous year. However, no district shall receive an amount greater than is provided by subsections 1, 2, 3, and 4 of this section. <u>If the general assembly appropriates more or less funds than is necessary to meet the requirements of this section, the twenty-five percent limit shall be adjusted to allow for the distribution of available funds</u>. The amount received per eligible pupil for the previous year shall be determined by dividing the amount received the previous year (1) by the number of eligible pupils on which the aid was based or (2) by the actual number of eligible pupils for the preceding school year.

* * *

> 8. A school district shall spend for teachers' salaries each year all moneys received pursuant to section 149.015, RSMo, an amount equal to at least seventy-five percent of one-half of the funds received from the school district trust fund distributed pursuant to section 163.087 during the preceding school year, at least seventy-five percent of the state school funds received under subsections 1, 2, 3, and 4 of this section and under section 162.975, RSMo, and as much of the revenue produced by local tax levies as was spent per eligible pupil for teachers' salaries the previous year. In the event a district fails to comply with this provision, the amount by which the district fails to spend funds as provided herein shall be deducted from the district's apportionment for the following year, provided that the state board of education may exempt a school district from this provision if the state board of education determines that circumstances warrant such exemption. [Emphasis added.]

Section 163.172, RSMo Supp. 1990, provides in part:

> 163.172. Teacher's minimum salary--review and reports to general assembly--state aid, when--tax levy, rate authorized--failure of district to meet requirements, effect--salary defined.--1. The department of elementary and secondary education shall develop and submit to the appropriations committees a plan to increase the public school teachers' salaries in Missouri. Beginning with fiscal year 1987, the general assembly shall make an annual appropriation to the excellence in education fund established under section 160.268, RSMo, for the purpose of increasing the state's minimum salary for public school teachers. Such plan shall be based upon data provided and shall provide that in school year 1986-87 the minimum teacher's salary shall be fifteen thousand dollars, in school year 1987-88 the minimum teacher's salary shall

be sixteen thousand dollars, in school year 1988-89 the minimum teacher's salary shall be seventeen thousand dollars, and in school year 1989-90 the minimum teacher's salary shall be eighteen thousand dollars.

2. Beginning with the budget requests for fiscal year 1991, the commissioner of education shall present to the appropriate committees of the general assembly information on the average Missouri teacher's salary, regional average salary data, national average salary data, and a plan for increasing the teachers' salaries in Missouri based upon such data.

3. Any school district which has personnel whose salary is determined to be below a level established in accordance with the plan for increasing teachers' salaries established under this section and who has met the requirements of this section and any subsequent guidelines established by the state board of education, with the advice of the commissioner of education, shall receive state aid for the sole purpose of increasing such salaries. Such guidelines shall recognize that the reassessment of real property and the applicable reduction or revision of property tax levies pursuant to section 137.073, RSMo, may cause some school districts to levy a tax below one dollar and twenty-five cents for each hundred dollars of assessed valuation. Such school districts shall not be penalized under the guidelines for this program during the school years 1986-87 and 1987-88.

4. Each participating school district shall certify to the commissioner of education the names of the duly qualified teachers in the district who are entitled to a state-paid minimum salary supplement under this section. The commissioner shall, in accordance with chapter 33, RSMo, execute payment to those districts for salary supplements to those designated

teachers. Any teacher receiving a minimum salary supplement under this section shall continue to receive the district base pay to which he would be entitled if he were not receiving the minimum salary supplement from the state. Such teacher's salary shall continue to show appropriate annual district salary increases as provided under subsection 5 of this section.

5. The department of elementary and secondary education shall review and determine the local effort ability and performance of each school district. In order to receive funds under this section, a school district which is not subject to section 162.920, RSMo, must have a total levy for operating purposes which is in excess of the amount allowed in section 11(b) of article X of the Missouri Constitution; and a school district which is subject to section 162.920, RSMo, must have a total levy for operating purposes which is in excess of twenty-five cents on each hundred dollars of assessed valuation. Each school district shall maintain a regular salary schedule, which shall be funded by revenues other than those provided in this section, and which shall show appropriate increases in funding due to revenues received from all other sources. If a school district fails to meet requirements of this subsection, such district shall not receive any revenues under this section until the failures have been corrected. [Emphasis added.]

* * *

Section 168.110, RSMo Supp. 1990, provides:

168.110. Contract modification, when--what provisions.--The board of education of a school district may modify an indefinite contract annually on or before the fifteenth day of May in the following particulars:

> (1) Determination of the date of beginning and length of the next school year;
>
> (2) Fixing the amount of annual compensation for the following school year as provided by the salary schedule adopted by the board of education applicable to all teachers.
>
> The modifications shall be effective at the beginning of the next school year. All teachers affected by the modification shall be furnished written copies of the modifications within thirty days after their adoption by the board of education.

In interpreting statutes, the fundamental rule is to ascertain the intent of the General Assembly from the language used and to give effect to that intent. Brown Group, Inc. v. Administrative Hearing Commission, 649 S.W.2d 874, 881 (Mo. banc 1983). Section 163.172.4, RSMo Supp. 1990, provides in part: "Any teacher receiving a minimum salary supplement under this section shall continue to receive the district base pay to which he would be entitled if he were not receiving the minimum salary supplement from the state." Section 163.172.5, RSMo Supp. 1990, provides in part: "Each school district shall maintain a regular salary schedule, which shall be funded by revenues other than those provided in this section, and which shall show appropriate increases in funding due to revenues received from all other sources."

Considering these provisions together, we conclude that appropriate increases in the school district's contribution to teachers' salaries must be made only when there have been increases in revenues received from other sources. Therefore, when there has been no such increase, there is no requirement in Section 163.172.5, RSMo Supp. 1990, that the district's salary schedule show an increase.

It does not follow, however, that Section 163.172.5, RSMo Supp. 1990, authorizes a salary schedule to show decreases in funding due to a decline in revenues from all other sources. Section 163.172.4, RSMo Supp. 1990, requires a "district base pay" while Section 163.172.5, RSMo Supp. 1990, requires each school district to "maintain a regular salary schedule." Based on the language used, we find that the legislature intended maintenance of a regular salary schedule to be a requirement for eligibility for a school district to receive a minimum salary

supplement. There is no authority for a school district to decrease its "district base pay." Such a decrease would constitute a failure to meet the requirements of Section 163.172, RSMo Supp. 1990, and would render a school district ineligible to participate in the minimum salary program.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

COUNTIES:
COUNTY COMMISSIONERS:
INCOMPATIBILITY OF OFFICES:
LEVEE DISTRICT SUPERVISOR:
LEVEE DISTRICTS:

The offices of supervisor of a levee district organized by the circuit court and county commissioner in the county where the levee district is located are not incompatible and one person may hold both offices at the same time.

October 18, 1991

OPINION NO. 145-91

Mark French
Mississippi County Prosecuting Attorney
Post Office Box 304
Charleston, Missouri 63834

Dear Mr. French:

This opinion is in response to your question asking:

> Is it legally permissible for a person to serve as supervisor of a levee district organized by the circuit court and also serve as a county commissioner of the county in which such levee district is located?

It is a settled principle of law that unless the Constitution, a statute, or the common law prohibits the holding of two public offices by one individual, an individual may hold two offices simultaneously. See Missouri Attorney General Opinion No. 16, Mallory, 1974, a copy of which is enclosed. Since there are no constitutional or statutory prohibitions in Missouri against the same person serving in the two positions about which you inquire, we must address whether the two positions are incompatible under the common law.

The common law rule has been stated in the case of State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636, 639-640 (1896), as follows:

> . . . At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not

> consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two,--some conflict in the duties required of the officers, as where one has some supervision of the others, is required to deal with, control, or assist him. It was said by Judge Folger (People v. Green, 58 N.Y. 295): "Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that 'incompatibility' from which the law declares that the acceptance of the one is the vacation of the other. The force of the word in its application to this matter is that, from the nature and relations to each other of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one towards the incumbent of the other. Thus, a man may not be landlord and tenant of the same premises. He may be landlord of one farm, and tenant of another, though he may not at the same hour be able to do the duty of each relation. The offices must subordinate, one the other, and they must per se have the right to interfere, one with the other, before they are incompatible at common law. . . .

To apply this rule, it is necessary to examine the two offices in question to determine whether there is any inconsistency in the functions of the offices which would render them incompatible.

The powers and duties of the board of supervisors of a levee district organized by the circuit court are set out in Section 245.095, RSMo 1986:

> 245.095. Powers and duties of supervisors.--In order to effect the leveeing, protection and reclamation of the land and other property in the district subject to tax, the board of supervisors is authorized and empowered to straighten,

> widen, change the course and line of any levee in or out of said district; to fill up any creek, drain, channel, river, watercourse or natural stream; and to divert or divide the flow of water in or out of said district; to construct and maintain sewers, levees, dikes, dams, sluices, revetments, drainage ditches, pumping stations, syphons and any other works and improvements deemed necessary to preserve and maintain the works in or out of said district; to construct roadways over levees and embankments; to construct any and all of said works and improvements across, through or over any public highway, railroad right-of-way, track, grade, fill or cut in or out of said district; to remove any fence, building or other improvements in or out of said district, and shall have the right to hold, control and acquire by donation or purchase, and if need be, condemn any land, easement, railroad or other right-of-way, sluice or franchise in or out of said district for right-of-way, or for any of the purposes herein provided, or for material to be used in constructing and maintaining said works and improvements for leveeing, protecting and reclaiming the lands in said district. Said board shall also have the right to condemn for the use of the district, any land or property within or without said district not acquired or condemned by the court on the report of the commissioners assessing benefits and damages and shall follow the procedure that is now provided by law for the appropriation of land or other property taken for telegraph, telephone and railroad rights-of-way.

The powers and duties of the county commission are set out primarily in Chapter 49, RSMo. Upon review of these provisions, we conclude that no incompatibility exists between the two offices. The duties and functions of one office are not inherently inconsistent or repugnant to the other. Neither office is superior to the other nor does one office have supervision over the other. Therefore, the common law rule of incompatibility is not violated by one person discharging the duties of the two offices.

Mark French

CONCLUSION

It is the opinion of this office that the offices of supervisor of a levee district organized by the circuit court and county commissioner in the county where the levee district is located are not incompatible and one person may hold both offices at the same time.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 16, Mallory, 1974

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

June 19, 1991

OPINION LETTER NO. 148-91

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Article III of the Missouri Constitution by adopting one new section, Section 8. A copy of the initiative petition and the proposed amendment which you submitted to this office on June 18, 1991, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

June 19, 1991

OPINION LETTER NO. 149-91

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to a proposed law repealing Sections 311.520, 312.230, 660.135, 660.185 and 660.190, RSMo 1986, and enacting in lieu thereof five new sections to be known as Sections 215.036, 311.520, 312.230, 660.135 and 660.190. A copy of the initiative petition and the proposed law which you submitted to this office on June 18, 1991, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

June 24, 1991

OPINION LETTER NO. 150-91

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall the statutes of Missouri be amended to increase the inspection fee for malt liquor and nonintoxicating beer from 5.9 cents to 24 cents per gallon with twenty percent of the fee credited to the housing trust fund, twenty percent to the utilicare program, twenty percent to the emergency financial assistance program and forty percent to the general revenue fund; to establish minimum annual appropriations for the utilicare and emergency financial assistance programs; and to repeal the restriction that state general revenue funds not be used to pay more than one-half of the costs of the emergency financial assistance program?

See our Opinion Letter No. 149-91.

We approve the legal content and form of the proposed statement. Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

June 21, 1991

OPINION LETTER NO. 151-91

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall Article III of the Constitution of Missouri be amended by adding a new section eight that would prohibit a person from serving more than eight years in either the state house of representatives or state senate, or a total of sixteen years in both houses, with any service resulting from an election or appointment occurring prior to the effective date of this amendment not counted toward the total number of years a person could serve?

See our Opinion Letter No. 148-91.

We approve the legal content and form of the proposed statement. Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ARCHITECTS AND ENGINEERS:
ENGINEERS:
PURCHASES:
PURCHASES WITHOUT BIDS:

The proposed price or cost of services is not to be considered in determining pursuant to Section 8.289, RSMo 1986, which architectural or engineering firms are the most highly qualified, but proposed price or cost is considered at the time of negotiation of the contract pursuant to Section 8.291, RSMo 1986.

October 18, 1991

OPINION NO. 153-91

The Honorable Walter H. Mueller, Jr.
Senator, District 15
State Capitol Building, Room 330
Jefferson City, Missouri 65101

Dear Senator Mueller:

This opinion is in response to your questions asking:

A. In procuring architectural and engineering services, may a public agency consider proposed price or cost of the services in determining which firms are the most highly qualified to provide the services under R.S.Mo. §§ 8.285-8.291?

B. At what point in the selection process may price or cost be considered by a public agency in procuring architectural and engineering services under R.S.Mo. §§ 8.285-8.291?

Sections 8.285 to 8.291, RSMo 1986, provide:

> 8.285. Policy on contracts for architectural, engineering, land surveying services.--It shall be the policy of the state of Missouri and political subdivisions of the state of Missouri to negotiate contracts for architectural, engineering and land surveying services on the basis of demonstrated competence and

qualifications for the type of services required and at fair and reasonable prices.

8.287. Definitions.--As used in sections 8.285 to 8.291 unless the context specifically requires otherwise:

(1) "Agency" means each agency of the state and each agency of a political subdivision thereof authorized to contract for architectural, engineering and land surveying services;

(2) "Architectural services" means any service as defined in section 327.091, RSMo;

(3) "Engineering services" means any service as defined in section 327.091, RSMo;

(4) "Firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice the profession of architecture, engineering or land surveying and provide said services;

(5) "Land surveying services" means any service as defined in section 327.272, RSMo;

(6) "Project" means any capital improvement project or any study, plan, survey or program activity of a state agency or political subdivision thereof, including development of new or existing programs.

8.289. Agencies using services to be furnished statement of firm's qualifications and performance data.--Present provisions of law notwithstanding, in the procurement of architectural, engineering or land surveying services, each agency which utilizes architectural, engineering or land surveying services shall encourage firms engaged in the lawful practice of their professions to annually submit a statement

of qualifications and performance data to the agency. Whenever a project requiring architectural, engineering or land surveying services is proposed for an agency of the state or political subdivision thereof, the agency shall evaluate current statements of qualifications and performance data of firms on file together with those that may be submitted by other firms regarding the proposed project. In evaluating the qualifications of each firm the agency shall use the following criteria:

(1) The specialized experience and technical competence of the firm with respect to the type of services required;

(2) The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;

(3) The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules;

(4) The firm's proximity to and familiarity with the area in which the project is located.

8.291. Negotiation for contract--not applicable, for certain political subdivisions.--1. The agency shall list three highly qualified firms. The agency shall then select the firm considered best qualified and capable of performing the desired work and negotiate a contract for the project with the firm selected.

2. For a basis for negotiations the agency shall prepare a written description of the scope of the proposed services.

3. If the agency is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm

> shall be terminated. The agency shall then undertake negotiations with another of the qualified firms selected. If there is a failing of accord with the second firm, negotiations with such firm shall be terminated. The agency shall then undertake negotiations with the third qualified firm.
>
> 4. If the agency is unable to negotiate a contract with any of the selected firms, the agency shall reevaluate the necessary architectural, engineering or land surveying services, including the scope and reasonable fee requirements, again compile a list of qualified firms and proceed in accordance with the provisions of sections 8.285 to 8.291.
>
> 5. The provisions of section 8.285 to 8.291 shall not apply to any political subdivision which adopts a formal procedure for the procurement of architectural, engineering and land surveying services.

Sections 8.285 to 8.291, RSMo 1986, were enacted by Senate Committee Substitute for House Bill No. 322, 82nd General Assembly, First Regular Session (1983), and are largely based on the "Brooks Architect-Engineers Act" or "Brooks Act," Public Law 92-582, (1972), codified at 40 U.S.C.A. §§ 541-544. The Legislative History of P.L. 92-582 states:

> Generally, however, it is expected that the agency head, through discussions with an appropriate number of the firms interested in the project, will obtain sufficient knowledge as to the varying architectural and engineering techniques that, together with the information on file with the agency, will make it possible for him to make a meaningful ranking. Under no circumstances should the criteria developed by an agency head relating to the ranking of architects and engineers on the basis of their professional qualifications include or relate to the fee to be paid to the firm, either directly or indirectly.

1972 U.S. Code Cong. and Admin. News, p. 4774. The Legislative History further states:

> The system favors selection of the most skilled and responsible members of these professions. . . .
>
> This system protects the interests of the taxpayers. Having won the competition on the basis of capability, the winning A/E [architect/engineer] must then negotiate his fee. . . .

Id. at p. 4769.

When Missouri adopts a federal statute, the intent of Congress has a bearing on the intent of the Missouri legislature. American Nat. Ins. Co. v. Keitel, 353 Mo. 1107, 186 S.W.2d 447, 448 (1945). "It may be presumed that the legislature had knowledge of the interpretation placed on that provision as expressed during the debates when before Congress for adoption." Id. See also Mid-Continent Aerial Sprayers, Inc. v. Industrial Commission, 420 S.W.2d 354, 360 (Mo. App. 1967). It must be presumed that the Missouri General Assembly had knowledge of the interpretation of the "Brooks Act" at the time Sections 8.285 to 8.291, RSMo 1986, were adopted. This presumption leads to the conclusion that proposed price or cost is not to be considered in determining which firms are the most highly qualified.

The primary rule of statutory construction is to ascertain the intent of the legislature, considering the words in their plain and ordinary meaning. Union Electric Company v. Director of Revenue, 799 S.W.2d 78 (Mo. banc 1990). Section 8.289, RSMo 1986, sets out four criteria to be considered by an agency in evaluating the qualifications of firms: (1) experience and technical competence; (2) capacity and capability to perform the work in question; (3) the firm's past record of performance, and (4) the firm's proximity to and familiarity with the area where the project will be located. Proposed price or cost is not listed as a factor for consideration. As a general rule, the express mention of one thing implies the exclusion of another. Harrison v. MFA Mutual Insurance Co., 607 S.W.2d 137, 146 (Mo. banc 1980). Where special powers are expressly conferred or special methods are expressly prescribed for the exercise of power, other powers and procedures are excluded. Brown v. Morris, 290 S.W.2d 160, 166 (Mo. banc 1956). Listing the specific criteria to be considered in evaluating the qualifications of firms and not including in such list the

proposed price or cost further leads to the conclusion the proposed price or cost is not to be considered in determining which firms are the most highly qualified.

Section 8.291, RSMo 1986, provides that the agency shall negotiate a satisfactory contract--including fee requirements--after the agency has selected the firm best qualified to perform the work. If negotiations are not successful, the agency should then negotiate with the second qualified firm and, if those negotiations are unsuccessful, then the third qualified firm. Based on Section 8.291, RSMo 1986, the proposed price or cost is considered at the time of negotiation of the contract.

CONCLUSION

It is the opinion of this office that the proposed price or cost of services is not to be considered in determining pursuant to Section 8.289, RSMo 1986, which architectural or engineering firms are the most highly qualified, but proposed price or cost is considered at the time of negotiation of the contract pursuant to Section 8.291, RSMo 1986.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

June 28, 1991

OPINION LETTER NO. 154-91

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to a proposed law repealing Sections 311.520, 312.230, 660.135, 660.185 and 660.190, RSMo 1986, and enacting in lieu thereof five new sections to be known as Sections 215.036, 311.520, 312.230, 660.135 and 660.190. A copy of the initiative petition and the proposed law which you submitted to this office on June 27, 1991, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

June 28, 1991

OPINION LETTER NO. 155-91

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall the statutes of Missouri be amended to increase the inspection fee for malt liquor and nonintoxicating beer from 6 cents to 24 cents per gallon with twenty percent of the fee credited to the housing trust fund, twenty percent to the utilicare program, twenty percent to the emergency financial assistance program and forty percent to the general revenue fund; to establish minimum annual appropriations for the utilicare and emergency financial assistance programs; and to repeal the restriction that state general revenue funds not be used to pay more than one-half of the costs of the emergency financial assistance program?

See our Opinion Letter No. 154-91.

We approve the legal content and form of the proposed statement. Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

July 10, 1991

OPINION LETTER NO. 160-91

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Article IX, Section 3(b) of the Missouri Constitution. A copy of the initiative petition and the proposed amendment which you submitted to this office on July 3, 1991, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
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July 18, 1991

OPINION LETTER NO. 164-91

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of the Missouri Constitution by the adoption of one new article, Article XIV. A copy of the initiative petition and the proposed amendment which you submitted to this office on July 10, 1991, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

July 24, 1991

OPINION LETTER NO. 165-91

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall Article IX, section 3(b) of the Constitution of Missouri be amended to change the minimum amount of annual state revenue required for the support of public elementary and secondary schools from one-fourth of total revenue -- exclusive of interest and sinking fund -- to one-third of total revenue -- exclusive of federal funds, gifts and bequests, net proceeds from bond sales, and revenues from certain dedicated taxes; and, further, to clarify that revenue for supporting the public elementary and secondary schools does not include appropriations made under court order for violations of the United States Constitution?

See our Opinion Letter No. 160-91.

We approve the legal content and form of the proposed statement. Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

July 24, 1991

OPINION LETTER NO. 166-91

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Article III of the Missouri Constitution by the adoption of one new section, Section 45(a). A copy of the initiative petition and the proposed amendment which you submitted to this office on July 23, 1991, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

August 5, 1991

OPINION LETTER NO. 168-91

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall the Constitution of the State of Missouri be amended by adding a new Article XIV which would require majority voter approval before the state or any political subdivision could appropriate public funds for the construction, purchase, operation or preservation of an athletic stadium with a capacity of 50,000 people or more, or for the payment of a debt or other obligation for such a stadium?

See our Opinion Letter No. 164-91.

We approve the legal content and form of the proposed statement. Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

August 2, 1991

OPINION LETTER NO. 170-91

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall Article III of the Constitution of Missouri be amended by adding a new section 45(a) that would prohibit Missouri's United States Senators from serving more than two terms and Missouri's United States Representatives from serving more than four terms and to apply to those terms of office which begin on or after this section becomes effective, with this section taking effect only after one-half of the states enact term limits for their members of congress; and further, should this section be found invalid the people of Missouri would intend their federal elected officials to voluntarily comply with its provisions?

See our Opinion Letter No. 166-91.

We approve the legal content and form of the proposed statement. Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

COUNTIES:
COUNTY FUNDS:
DOMESTIC VIOLENCE:

(1) Interest earned on the monies in the special fund required by Section 455.205.3, RSMo 1986, remains with the fund; (2) counties may not use monies in the special fund required by Section 455.205.3, RSMo 1986, for purposes other than domestic violence shelters and may not borrow from the fund for other purposes; and (3) the provision in Section 455.215.3, RSMo 1986, identifying January 1 and July 1 as the dates for a designated authority to make payments to a shelter is directory, not mandatory.

November 21, 1991

OPINION NO. 171-91

The Honorable James L. Mathewson
Senator, District 21
State Capitol Building, Room 326
Jefferson City, Missouri 65101

Dear Senator Mathewson

This opinion is in response to your questions asking:

A. Is interest earned on the monies in the special fund required by 455.205.3, to be retained in the fund?

B. May counties "borrow" monies from the special fund created pursuant to 455.205.3 for uses other than by domestic violence shelters?

C. Pursuant to 455.215.3, may a designated authority make per diem payments to domestic violence shelters at times other than January 1 or July 1 of a year?

Sections 455.200 to 455.230, RSMo 1986, provide for funding for shelters for victims of domestic violence. Section 455.205, RSMo 1986, establishes a fee to be used to fund shelters for victims of domestic violence. This section provides:

> 455.205. Funding shelters--fees for marriage licenses and decrees of dissolution of marriage, how established,

> amount--reports.--1. The governing body of any county, or of any city not within a county, by order of ordinance may impose a fee upon the issuance of a marriage license and may impose a fee upon the entry of a decree of dissolution of marriage by a circuit court under the provisions of section 452.305, RSMo.
>
> 2. The fee imposed upon the issuance of a marriage license shall be five dollars, shall be paid by the person applying for the license, and shall be collected by the recorder of deeds at the time the license is issued. The fee imposed upon the entry of a decree of dissolution of marriage shall be ten dollars, shall be paid by the party who filed the petition, and shall be collected by the clerk of the court as other costs of the proceedings are collected.
>
> 3. At the end of each month, the recorder of deeds and the clerk of the circuit court shall file a verified report with the county court of the fees collected pursuant to the provisions of subsection 2 of this section. The report may be consolidated with the monthly report of other fees collected by such officers. Upon the filing of the reports the recorder of deeds and the clerk of the circuit shall forthwith pay over to the county treasurer all fees collected pursuant to subsection 2 of this section. The county treasurer shall deposit all such fees in a special fund to be expended only to provide financial assistance to shelters for victims of domestic violence as provided in sections 455.200 to 455.230.

A designated authority is defined in Section 455.200(1), RSMo 1986:

> 455.200. Definitions.--As used in sections 455.200 to 455.230, unless the context clearly requires otherwise, the following words and phrases mean:

> (1) "Designated authority", the board, commission, agency, or other body designated under the provisions of section 455.210 as the authority to administer the allocation and distribution of funds to shelters;
>
> * * *

Pursuant to Section 455.210, RSMo 1986, the governing body of the county or city not within a county "shall designate in the order or ordinance imposing the fees, as provided in section 455.205, an appropriate board, commission, agency or other body of the county, or city, as the authority to administer the allocation and distribution of the funds to shelters for victims of domestic violence in the manner provided in sections 455.200 to 455.230. . . ."

Sections 455.215 and 455.220, RSMo 1986, explain the requirements for applying and qualifying for funds.

> 455.215. Applications for shelter funding, contents, when filed--payments from fund made when.--1. A shelter for victims of domestic violence may apply to the designated authority for funds to be used for the funding of the shelter. All applications shall be submitted by the first day of October of the year preceding the calendar year for which the funding is desired, and shall include all of the following:
>
> (1) Evidence that the shelter is incorporated in this state as a nonprofit corporation;
>
> (2) A list of the directors of the corporation, and a list of the trustees of the shelter if different;
>
> (3) The proposed budget of the shelter for the following calendar year;
>
> (4) A summary of the services proposed to be offered in the following calendar year;

(5) An estimate of the number of persons to be served during the following calendar year.

2. Upon receipt of an application for funds from a shelter that meets the criteria set forth in section 455.220, the designated authority, on or before the fifteenth day of November of the year in which the application is filed, shall notify the shelter, in writing, whether it is eligible to receive funds, and if the shelter is eligible, specify the amount available for that shelter from the fees collected pursuant to section 455.205.

3. Funds allocated to shelters pursuant to this section shall be paid to the shelters twice annually, on the first day of January and the first day of July of the years following the year in which the application is filed.

455.220. Requirements for shelter to qualify for funds.--1. To qualify for funds allocated and distributed pursuant to section 455.215 a shelter shall meet all of the following requirements:

(1) Be incorporated in the state as a nonprofit corporation;

(2) Have trustees who represent the racial, ethnic and socioeconomic diversity of the community to be served, at least one of whom must possess personal experience in confronting or mitigating the problems of domestic violence;

(3) Receive at least twenty-five percent of its funds from sources other than funds distributed pursuant to section 455.215. These other sources may be public or private and may include contributions of goods or services, including materials, commodities, transportation, office space or other types of facilities or personal services;

(4) Provide residential service or facilities for children when accompanied by a parent, guardian, or custodian who is a victim of domestic violence and who is receiving temporary residential service at the shelter;

(5) Require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify individuals served by the shelter.

2. A shelter does not qualify for funds if it discriminates in its admissions or provision of services on the basis of race, religion, color, age, marital status, national origin, or ancestry.

Shelters receiving funds are required by Section 455.230, RSMo 1986, to file an annual report with the designated authority.

455.230. Annual reports by shelters, contents--confidentiality.--1. A shelter for victims of domestic violence that receives funds pursuant to sections 455.200 to 455.230 shall file an annual report with the designated authority of the county, or of the city not within a county, in which it is located, on or before the thirty-first day of March of the year following the year in which funds were received. The annual report shall include statistics on the number of persons served by the shelter, the relationship of the victim of domestic violence to the abuser, the number of referrals made for medical, psychological, financial, educational, vocational, child care services or legal services, and shall include the results of an independent audit. No information contained in the report shall identify any person served by the shelter or enable any person to determine the identity of any such person.

> 2. The designated authority shall compile the reports filed pursuant to subsection 1 of this section annually.

Your first question asks whether interest earned on the monies in the special fund required by Section 455.205.3, RSMo 1986, must be retained in the fund. In Attorney General Opinion No. 108, Busker, 1981, a copy of which is enclosed, we concluded that interest collected on a county assessment fund goes into that fund, not to county general revenue. We stated: "It is our view that the holding of the court in State ex rel. Fort Zumwalt School District v. Dickherber, 576 S.W.2d 532 (Mo. banc 1979), is applicable here. In that case the court stated the general principle that the interest on public funds designated for a specific purpose follows those funds in the absence of an unequivocable legislative expression otherwise." See also Attorney General Opinion Letter No. 126, Antonio, 1981, and Opinion No. 171, Antonio, 1980. A copy of each is enclosed. Based on the discussion in the foregoing opinions and the case cited above, we conclude that interest earned on the monies in the special fund required by Section 455.205.3, RSMo 1986, remains with the fund.

You next ask whether counties may "borrow" from the fund for uses other than by domestic violence shelters. Section 455.205.3, RSMo 1986, expressly states: "The county treasurer shall deposit all such fees in a special fund to be expended only to provide financial assistance to shelters for victims of domestic violence." [Emphasis added.] There is no statutory authorization for the county to use such funds for any other purpose or to borrow from the fund for other purposes.

Your final question asks whether a designated authority may make "per diem payments" to shelters at times other than January 1 or July 1 of a year. Section 455.215.3, RSMo 1986, states: "Funds allocated to shelters pursuant to this section shall be paid to the shelters twice annually, on the first day of January and the first day of July of the years following the year in which the application is filed." It is a long-standing rule of statutory construction that a statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others is merely directory and not mandatory, unless the nature of the act to be performed or the phraseology of the statute is such, that the designation of time must be considered as a limitation of the power of the officer. Mead v. Jasper County, 322 Mo. 1191, 18 S.W.2d 464, 465 (1929); State ex rel. Sisson v. Felker, 336 S.W.2d 419, 421 (Spr. App. 1960). Under the foregoing rule of statutory construction, the language of Section 455.215.3, RSMo 1986,

indicates the times specified for payment are directory and not mandatory. Therefore, payments may be made to shelters at times other than January 1 or July 1.

CONCLUSION

It is the opinion of this office that: (1) interest earned on the monies in the special fund required by Section 455.205.3, RSMo 1986, remains with the fund; (2) counties may not use monies in the special fund required by Section 455.205.3, RSMo 1986, for purposes other than domestic violence shelters and may not borrow from the fund for other purposes; and (3) the provision in Section 455.215.3, RSMo 1986, identifying January 1 and July 1 as the dates for a designated authority to make payments to a shelter is directory, not mandatory.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 108, Busker, 1981
Opinion Letter No. 126, Antonio, 1981
Opinion No. 171, Antonio, 1980

CITIES, TOWNS AND VILLAGES:
VACANCY:
VACANCY IN OFFICE:
VILLAGES:

1) Pursuant to Section 80.230, RSMo 1986, the chairman of the board of trustees of a village has no vote in filling a vacancy on the board except in case of a tie, 2) a vacancy on the board of trustees can be filled by a two-to-one vote of the remaining members, excluding the chairman, 3) pursuant to Section 80.070, RSMo 1986, a quorum of a five-member board of trustees of a village is three (3) members, and 4) pursuant to Section 80.110, RSMo 1986, three (3) members must vote to pass an ordinance regardless of any vacancy.

October 11, 1991

OPINION NO. 172-91

W. James Icenogle
Camden County Prosecuting Attorney
Camden County Courthouse
One Court Circle
Camdenton, Missouri 65020

Dear Mr. Icenogle:

This opinion is in response to your questions asking:

> Under Section 80.230 RSMo, when a vacancy arises on the five (5) member Board of Trustees of a Village and the vacancy is not in the Office of Chairman, may the sitting Chairman participate in the vote to fill the vacancy on the board?
>
> On a five (5) member board, when there is one vacancy, are other actions taken by the board valid prior to filling of the vacancy and if so, is the majority required under Sections 80.070 and 80.110, RSMo a minimum of three (a majority of the full board) or may action be taken with a two to one majority, for example, if one member should abstain or be disqualified from voting?

Along with your questions, you state:

> The facts giving rise to this request are as follows: A vacancy was created on the Board of Trustees of the Village of Four Seasons Missouri through the death of one of its members. The deceased trustee was not chairman of the board. Inasmuch as the vacancy was not created in the Office of Chairman, a vote was held to fill the vacancy and the sitting chairman cast a vote. The vote was two to two and the board is deadlocked.
>
> This raises the question of whether the chairman can vote and if not, whether a majority of less than three members of the board would be a valid vote on this matter or any other action which the board might take during the existence of this vacancy. Also, the board has continued with its regular business during the vacancy and some question was raised as to the validity of their actions in light of the mandatory language of Section 80.230 RSMo.

Section 80.060, RSMo 1986, provides that "[t]he chairman may vote on any proposition before the board." This must be considered along with Section 80.230, RSMo 1986, which provides:

> 80.230. Trustees--vacancy, how filled.--All vacancies in the board of trustees shall be filled by the remaining members of the board. In case the office of chairman becomes vacant, the remaining members shall select one of their own number as temporary chairman and then proceed to elect some person to fill such vacancy; provided, the chairman or temporary chairman shall have no vote except in case of a tie. [Emphasis added.]

In Attorney General Opinion No. 328, Anderson, 1962, a copy of which is enclosed, we concluded that in filling vacancies on the board the chairman of a board of trustees of a village has no vote unless there is a tie. This conclusion was based on the case Krug v. Village of Mary Ridge, 271 S.W.2d 867 (Mo. App. 1954), where the court of appeals stated:

> It should be pointed out that the chairman of the board of trustees of a village is

> not a mere presiding officer with the power to vote only in case of a tie (as in the case of the mayor of the fourth class city, § 79.120). He is entitled to vote on all measures which come before the board, except that in filling vacancies on the board the chairman has no vote unless there is a tie. Section 80.230.

Id., 271 S.W.2d at 872.

We believe Opinion No. 328, Anderson, 1962 remains valid. Legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). Based on the plain language of the statute, we conclude that the chairman of the board has no vote in filling a vacancy on the board of trustees unless there is a tie.

The statement of facts accompanying your opinion request raises the additional question of whether a majority vote of the remaining three members of the board, excluding the chairman, is sufficient to fill a vacancy. Section 80.230, RSMo 1986, expressly provides for a vacancy to be filled "by the remaining members of the board." The chairman or temporary chairman has no vote except in the case of a tie. In the facts you present, this provision would mean three members of the board are eligible to vote.

Nothing in Section 80.230, RSMo 1986, expressly requires a unanimous vote of remaining members to fill a vacancy. "[T]he courts indulge a strong presumption against a legislative intent to create a condition that might result in a vacancy in public office." State ex inf. Lamkin, ex rel. Harrison v. Tennyson, 151 S.W.2d 1090, 1091 (Mo. banc 1941). Based on the language of the statute, we conclude a vacancy on a board of trustees can be filled by a two-to-one vote of the remaining members, excluding the chairman.

Your second question asks whether other actions taken by the board prior to filling the vacancy are valid and how many votes are required for action to be taken. We assume that the reference to "action" in the question means the enactment of an ordinance as provided by Section 80.110, RSMo 1986.

Section 80.070, RSMo 1986, provides:

> 80.070. Trustees--quorum.--At all meetings of the board, a majority of the

> trustees shall constitute a quorum to do business; a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the board of trustees previously, by ordinance, may have prescribed. [Emphasis added.]

Section 80.110, RSMo 1986, provides:

> 80.110. Trustees--passage of ordinances.--No ordinance shall be passed except by bill, and no bill shall become an ordinance unless on its passage a majority of all the members of the board of trustees vote therefor, and the yeas and nays be entered upon the journal; . . . [Emphasis added.]

Sections 80.070 and 80.110, RSMo 1986, refer to a "majority of the trustees" and a "majority of all the members of the board of trustees." In Braddy v. Zych, 702 S.W.2d 491 (Mo. App. 1985) the court considered the meaning of the phrase "all the members" and whether such phrase referred to the full authorized membership of a board or the actual membership of the board at the time the vote is taken. The court reviewed cases from other states and concluded the better view is that "all the members" refers to the full authorized membership. Following the view in Braddy v. Zych, supra, we conclude that the references to a "majority of the trustees" and a "majority of all the members of the board of trustees" in Sections 80.070 and 80.110, RSMo 1986, refer to a majority of the full authorized membership of the board.

Section 80.040, RSMo 1986, states the corporate powers of a village "shall be vested in a board of trustees, to consist of five members. . . ." A majority of the full authorized membership of the board of trustees, namely, a majority of the five trustees, is three members. Therefore, pursuant to Sections 80.070 and 80.110, RSMo 1986, a quorum of a five-member board of trustees is three members and a majority, or three members, must vote to pass an ordinance.

Furthermore, we find no provisions declaring invalid an action taken by a board prior to filling a vacancy.

W. James Icenogle

CONCLUSION

It is the opinion of this office that 1) pursuant to Section 80.230, RSMo 1986, the chairman of the board of trustees of a village has no vote in filling a vacancy on the board except in case of a tie, 2) a vacancy on the board of trustees can be filled by a two-to-one vote of the remaining members, excluding the chairman, 3) pursuant to Section 80.070, RSMo 1986, a quorum of a five-member board of trustees of a village is three (3) members, and 4) pursuant to Section 80.110, RSMo 1986, three (3) members must vote to pass an ordinance regardless of any vacancy.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 328, Anderson, 1962

COUNTIES:
COUNTY PLANNING AND ZONING:
COUNTY ZONING:
PLANNING AND ZONING:
ZONING:

A third class county wherein the voters approved planning and zoning on August 6, 1968 pursuant to Section 64.530, RSMo, is authorized to proceed with planning and zoning without another vote of the people absent a showing of a radical change in conditions.

August 30, 1991

OPINION NO. 174-91

Michael W. Bradley
Carroll County Prosecuting Attorney
Carroll County Courthouse
Carrollton, Missouri 64633

Dear Mr. Bradley:

This opinion is in response to your question asking:

> Must a third class county have another vote of the people on the issue of county planning and zoning, as provided by Section 64.510, R.S.Mo., when a vote of the people, which approved planning and zoning, was held on August 6, 1968, but the county did not proceed with establishing planning and zoning in that the other requirements of Section 64.510 et. seq. were not followed?

Along with your question, you state:

> On August 6, 1968 the voters of Carroll County approved county planning and zoning, in an election submitting the question as provided for by Section 64.530.2, R.S.Mo.
>
> The County Court appointed a Planning Commission. That Planning Commission met at least once and possibly on a few additional times.
>
> No master plan was ever adopted. No zoning regulations were ever promulgated. . . .

Section 64.510, RSMo 1986, provides:

Michael W. Bradley

> 64.510. County commission may provide for county plan, when--county planning commission (second and third class counties).--The county commission of any county of the second or third class may, after approval by vote of the people of the county, provide for the preparation, adoption, amendment, extension and carrying out of a county plan for all areas of the county outside the corporate limits of any city, town or village which has adopted a city plan in accordance with the laws of the state. Upon the adoption of the county plan there is created in the county a county planning commission as hereinafter provided.

Section 64.530, RSMo 1986, provides:

> 64.530. Planning or zoning to be adopted only after approval by voters--submission of question (second and third class counties).--1. Before the county commission of any such county shall adopt any plan or create any commission provided for in sections 64.510 to 64.690 it shall order the question as to whether or not the county commission shall adopt county planning or zoning submitted to the voters of the county.
>
> 2. The question shall be submitted in substantially the following form:
>
> Shall county zoning (or planning) be adopted?
>
> 3. If a majority of the votes cast on the question be in favor of the adoption of zoning or planning the county commission may then proceed as heretofore provided in sections 64.510 to 64.690.

Section 64.520, RSMo Supp. 1990, establishes the composition of the county planning commission; such planning commission must have as its members one county commissioner, the county highway engineer, and one resident from the unincorporated part of each township in the county.

Michael W. Bradley

Section 64.540, RSMo 1986, provides authority for the county planning commission to make rules.

> 64.540. Planning commission--general powers--rules--employees, consultants--expenditures limited--fees, third class counties (second and third class counties).--The county planning commission may create and adopt rules for the transaction of its business and shall keep a public record of its resolutions, transactions, findings, and recommendations. . . . [Emphasis added.]

The county planning commission is authorized by Section 64.550, RSMo 1986, to adopt a county master plan. Section 64.550, RSMo 1986, provides in part:

> 64.550. Master plan of county--contents--hearings--adoption (second and third class counties).--The county planning commission shall have power to make, adopt and publish an official master plan of the county for the purpose of bringing about coordinated physical development in accordance with the present and future needs. . . . The county planning commission may adopt the official master plan in whole or in part and may subsequently amend or extend the adopted plan or portion thereof. Before the adoption, amendment or extension of the plan or portion thereof, the commission shall hold at least one public hearing thereon, fifteen days' notice of the time and place of which shall be published in at least one newspaper having general circulation within the county, and notice of such hearing shall also be posted at least fifteen days in advance thereof in one or more public areas of the courthouse of the county. Such hearing may be adjourned from time to time. The adoption of the plan, or part thereof, shall be by resolution carried by not less than a majority vote of the full membership of the county planning commission. After the adoption of the official master plan, or part thereof, an attested copy shall be

> certified to the county commission, to the recorder of deeds and to the clerk of each incorporated area covered by the plan or part thereof. [Emphasis added.]

Section 64.580, RSMo 1986, provides: "The county planning commission may also prepare, adopt, change and amend, as parts of the official master plan or otherwise, sets of regulations governing subdivisions of land in unincorporated areas. . . . Such subdivision regulations shall be adopted, changed or amended only after a public hearing has been held thereon, public notice of which shall be given in the manner provided for the hearing in section 64.550." [Emphasis added.]

In County of Platte v. Chipman, 512 S.W.2d 199 (Mo. App. 1974), the court discussed the zoning authority of a county:

> The exercise of the right to control the use of real property by political entities (which in our modern world and in legal parlance is "zoning") is basically an exercise of police power which initially rests solely in the sovereign. Such power is not enjoyed by lesser governing bodies, such as, counties and municipalities, in the absence of specific grant or delegation to such bodies by the sovereign.

Id., 512 S.W.2d at 202. The court observed that Sections 64.510, et seq., RSMo, provide the means by which such a delegation is made. Id.

In the facts you have presented, in accordance with Sections 64.530.2 and 64.510, RSMo, the question of whether county planning and zoning shall be adopted was submitted to and approved by the voters on August 6, 1968. Chapter 64, RSMo, does not specifically state when such approval is effective thus authorizing the county commission to provide for adoption of a county plan. However, it is helpful to look at effective dates for other measures submitted to the voters. Article III, Section 51 of the Constitution of Missouri, provides that any measure proposed by initiative "shall take effect when approved by a majority of the votes cast thereon." In State ex rel. Otto v. Kansas City, 310 Mo. 542, 276 S.W. 389 (1925)(en banc), the court opined on the effective date of the Charter of Kansas City:

> There is no other constitutional provision and no statute relating to the

> time when the proposed charter, if adopted, becomes the charter of such city. Absent constitutional or general statutory provision fixing such time, the proposed charter would become the charter of such city on the date of its adoption, unless otherwise provided therein.

Id., 276 S.W.at 396. Based upon the foregoing, we conclude that the approval was effective on August 6, 1968, at the time the voters approved the submitted question, thus authorizing the county commission to provide for adoption of a county plan.

The next issue for consideration is whether the lapse of 23 years (1991 minus 1968) removes the authority previously granted to the county commission on August 6, 1968. Missouri courts have examined the issue of political subdivisions exercising authority to issue bonds years after the election granting such authorization was held. The courts have concluded that a mere lapse of time does not automatically remove this authority. See Arkansas-Missouri Power Corporation v. City of Kennett, 348 Mo. 1108, 156 S.W.2d 913 (banc 1941)(five years); Missouri Electric Power Co. v. Smith, 348 Mo. 738, 155 S.W.2d 113 (1941)(nine years); Bowling v. Longwell, 400 S.W.2d 115 (Mo. 1966)(nine years); Petition of City of St. Louis, 363 S.W.2d 612 (Mo. banc 1963) (eighteen years).

"Whether a city's authority to issue bonds terminates by reason of a lapse of time depends upon the facts and circumstances of the particular case." Bowling v. Longwell, 400 S.W.2d at 119. In the absence of evidence showing a "radical change in conditions," the court has deferred to the judgment of "the administrative officials to whom the people of the city have entrusted the management of its affairs." Arkansas-Missouri Power Corporation v. City of Kennett, supra, 156 S.W.2d at 919. In Petition of City of St. Louis, supra, the court found neither a change in circumstances nor any ordinance, statute or constitutional provisions removing authority because of the lapse of time. Id., 363 S.W.2d at 619.

Similarly, nothing in the provisions of Sections 64.510, et seq., RSMo, establishes a particular date or time by which the county commission or created county planning commission must take action. You have not provided any information demonstrating a "radical change in conditions" in Carroll County since the approval of planning and zoning authority on August 6, 1968. In the absence of any specific requirement that the county adopt a plan within a certain time frame and in the absence of any radical change in conditions in Carroll County,

we conclude the county remains authorized to proceed without another vote of the people.

CONCLUSION

It is the opinion of this office that a third class county wherein the voters approved planning and zoning on August 6, 1968 pursuant to Section 64.530, RSMo, is authorized to proceed with planning and zoning without another vote of the people absent a showing of a radical change in conditions.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CHAUFFEUR LICENSE:
DEPARTMENT OF REVENUE:
DRIVERS LICENSE:

Employees of a utility company who occasionally drive one-ton crew cab trucks and 24,000 lb. stake bed trucks in which tools, equipment and employees are transported and who, at other times in the course of their employment, drive passenger cars or pickup trucks, may do so with only a Class F license pursuant to Sections 302.700 to 302.780, RSMo, and 12 CSR 10-24.200.

December 10, 1991

OPINION NO. 177-91

The Honorable Gracia Yancey Backer
Representative, District 23
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Backer:

This opinion is in response to your question asking:

> Whether employees of a utility company who, on occasion in the course of their employment, drive vehicles such as one-ton crew cab trucks and 24,000 lb. stake bed trucks in which tools, equipment and employees are transported, and who, at other times in the course of their employment, drive passenger cars or pickup trucks, may do so with only a Class F license.

The "Uniform Commercial Driver License Act" was enacted by House Bill No. 3, 85th General Assembly, First Extraordinary Session (1989), to achieve compliance with the provisions of the "Commercial Motor Vehicle Safety Act of 1986," Title XII of P.L. 99-570, 49 U.S.C.A. App. § 2701 et seq.

Sections 302.010 and 302.700, RSMo, as amended by Conference Committee Substitute No. 2 for House Substitute No. 2 for House Committee Substitute for House Bill No. 251, 86th General Assembly, First Regular Session (1991) (which bill is referred to hereinafter as "House Bill No. 251"), provide the following definitions of "commercial motor vehicle":

302.010. Except where otherwise provided, when used in this chapter, the following words and phrases mean:

* * *

(2) "Commercial motor vehicle", a motor vehicle designed or regularly used for carrying freight and merchandise, or more than fifteen passengers;

* * *

Section 302.700.

* * *

2. When used in sections 302.700 to 302.780, the following words and phrases mean:

* * *

(6) "Commercial motor vehicle", a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross combination weight rating of twenty-six thousand one or more pounds inclusive of a towed unit which has a gross vehicle weight rating of ten thousand one pounds or more;

(b) If the vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds or such lesser rating as determined by federal regulation;

(c) If the vehicle is designed to transport more than fifteen passengers, including the driver; or

(d) If the vehicle is transporting hazardous materials and is required to be placarded under the Hazardous Materials Transportation Act (46 U.S.C. 1801 et seq.);

The definition in Section 302.700.2(6), as quoted above, is similar to the definition contained in 49 CFR 383.5, a regulation promulgated by the United States Department of Transportation.

The United States Department of Transportation has promulgated regulations creating three classifications of commercial motor vehicles labeled A, B and C. 49 CFR 383.91. These classifications, along with additional classifications, have been adopted by the Director of the Missouri Department of Revenue and promulgated as 12 CSR 10-24.200. The classifications are based on the "gross vehicle weight rating" of commercial vehicles. Section 302.700.2(18), RSMo, as enacted by House Bill No. 251, defines the term "gross vehicle weight rating":

> (18) "Gross vehicle weight rating" or "GVWR", the value specified by the manufacturer or manufacturers as the maximum loaded weight of a single or a combination vehicle, or registered gross weight, whichever is greater. The GVWR of a combination vehicle, commonly referred to as the "gross combination weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units;

A Class A license, as described in 12 CSR 10-24.200(2), pertains to any combination of vehicles with a gross combination weight rating or a registered gross weight of twenty-six thousand one pounds or more, provided the gross vehicle weight rating of the vehicle being towed is ten thousand one pounds or more. A Class B license, as described in 12 CSR 10-24.200(3), refers to vehicles with a gross vehicle weight rating or a registered gross weight of twenty-six thousand one pounds or more, or any vehicle towing a vehicle with a gross vehicle weight rating of ten thousand pounds or less. A Class C license, as described in 12 CSR 10-24.200(4), allows the holder to drive a vehicle with a gross vehicle weight rating of twenty-six thousand pounds or less if the vehicle is designed to transport sixteen or more passengers or if the vehicle is transporting hazardous materials and is required to be placarded or any vehicle towing a vehicle with a gross vehicle weight rating of ten thousand pounds or less. The vehicles discussed in your question would not appear to fit the classifications A, B or C.

Section 302.015, RSMo Supp. 1990, authorizes the Director of Revenue to make additional license classifications. This section provides:

> 302.015. License classification system, director to establish--categories.--Notwithstanding the provisions of the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub.Law 99-570), the director shall have the authority to establish a license classification system, and shall not be limited to classification of the following:
>
> (1) Any person, other than one subject to sections 302.700 to 302.780, who operates a motor vehicle in the transportation of persons or property, and who receives compensation for such services in wages, salary, commission or fare; or who as an owner or employee operates a motor vehicle carrying passengers or property for hire; or who regularly operates a commercial motor vehicle of another person in the course of or as an incident to his employment, but whose principal occupation is not the operating of such motor vehicle, except that a school bus operator who obtains a school bus permit as provided in section 302.272 shall not be considered in this class;
>
> * * *

The Director of Revenue has also established classifications E and F. These are described in 12 CSR 10-24.200(5) and (6):

> (5) Class E - The holder of a Class E license who receives compensation in wages, salary, commission or fare to drive any motor vehicle in the transportation of persons or property, or is an owner or employee and drives a motor vehicle carrying passengers or property for hire, or regularly drives a commercial motor vehicle of another person in the course of or as an incident to his/her employment, but whose principal occupation is not the

> driving of that motor vehicle, may drive any of the described vehicles provided the license bears the proper endorsement(s), if any, required for the type of vehicle being driven. A holder of a Class E license shall not be entitled to drive any vehicle whose operation requires the driver to hold a Class A, Class B or Class C license. A holder of a Class E license may drive all vehicles which may be driven by a holder of a Class F license, but not motorcycles or vehicles which require an endorsement(s) unless the proper endorsement(s) appears on the license.
>
> (6) Class F - The holder of a Class F license may drive any motor vehicle other than one requiring the driver to hold a Class A, Class B, Class C or Class E license, including any recreational vehicle being used solely for personal use, except that the holder of a Class F license may not drive motorcycles or vehicles which require an endorsement(s) unless the proper endorsement(s) appears on the license. Nothing in this section shall be construed to prevent operators of recreational motor vehicles for personal use from operating those vehicles with a Class F license.

In responding to your question, we assume the vehicles to which you refer are less than the weight requirements for a Class A, B or C license. The question, then, is whether the employees are required to have a Class E license. Rule 12 CSR 10-24.200(5) requires a Class E license for three types of drivers: one who receives compensation in wages, salary, commission or fare to drive any motor vehicle in the transportation of persons or property; one who is an owner or employee and drives a motor vehicle carrying passengers or property for hire; and one who regularly drives a commercial motor vehicle of another person in the course of or as an incident to his/her employment, but whose principal occupation is not the driving of that motor vehicle. A holder of a Class E license is not entitled to drive any vehicle whose operation requires a Class A, B or C license.

Because we assume the vehicles driven by the employee in your question do not fall in classification A, B or C, they would not be commercial motor vehicles as defined in Section

302.700.2(6), RSMo, as enacted by House Bill No. 251. Because your facts indicate the vehicles in question are used to carry tools, equipment and employees, not "freight and merchandise, or more than fifteen passengers," they also would not be commercial motor vehicles as defined in Section 302.010(2), RSMo, as enacted by House Bill No. 251. Therefore, whether the employee requires a Class E license depends on whether he receives compensation in wages, salary, commission or fare to drive any motor vehicle in the transportation of persons or property or drives a motor vehicle carrying passengers or property for hire.

The driver requiring a Class E driver's license is similar to the person formerly defined as a "chauffeur" in Section 302.010(1), RSMo 1986, repealed. This office has previously issued opinions addressing whether a chauffeur's license was required.

In Attorney General Opinion No. 88, Tatum, July 6, 1953, a copy of which is enclosed, this office concluded that traveling salesmen operating company cars were not required to have a chauffeur's license. In that opinion we considered the three criteria for determining whether such a license would be necessary. As in the present case, the vehicles involved were not "commercial vehicles." We further stated: ". . . the compensation they receive is not paid to them for services performed in driving the car, but is paid to them for the performance of their other duties, specifically for the selling of the merchandise vended by the employer. . . . It is clear that the drivers in your statement of facts do not carry either passengers or property for hire." Id. at 3. See also Attorney General Opinion No. 227, Burlison, August 5, 1964; and Attorney General Opinion Letter No. 70, Brandom, January 19, 1970; copies of which are enclosed.

Based upon the foregoing, we conclude that a Class E driver's license is not required for the employees described in your question.[1]

[1]We assume that the employees about whom you inquire drive only on an occasional basis and that driving is not a regular part of the employee's duties. As discussed in the enclosed opinions, different facts may result in a different conclusion.

CONCLUSION

It is the opinion of this office that employees of a utility company who occasionally drive one-ton crew cab trucks and 24,000 lb. stake bed trucks in which tools, equipment and employees are transported and who, at other times in the course of their employment, drive passenger cars or pickup trucks, may do so with only a Class F license pursuant to Sections 302.700 to 302.780, RSMo, and 12 CSR 10-24.200.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 88, Tatum, July 6, 1953
Opinion No. 227, Burlison, August 5, 1964
Opinion Letter No. 70, Brandom, January 19, 1970

COMPENSATION:
FIRE PROTECTION DISTRICTS:
HEALTH INSURANCE:
INSURANCE:

Section 321.190, RSMo Supp. 1990, does not limit the amount of money which a fire protection district, established and conducting business under Chapter 321, RSMo, can expend for health insurance benefits provided to directors of the fire protection district pursuant to Section 67.150, RSMo Supp. 1990.

August 19, 1991

OPINION NO. 178-91

The Honorable Thomas McCarthy
Senator, District 26
State Capitol Building, Room 331
Jefferson City, Missouri 65101

Dear Senator McCarthy:

This opinion is in response to your questions asking:

> Does Section 321.190 of the Revised Statutes of Missouri limit the amount of money which a fire protection district, established and conducting business under Chapter 321 of the Revised Statutes of Missouri, can expend for health insurance benefits provided to directors of that fire protection district pursuant to Section 67.150 of the Revised Statutes of Missouri?
>
> If such an expenditure limitation exists, how much can such fire protection district expend yearly for the health insurance benefits for the director/chairman, director/secretary, director/treasurer and non-officer director of its board of directors?

In Attorney General Opinion No. 33-89, a copy of which is enclosed, we concluded that directors of a fire protection district are eligible for health insurance benefits from the fire protection district pursuant to the provisions of Section 67.150, RSMo 1986.

Section 67.150, RSMo Supp. 1990, provides in part:

> 67.150. Insurance for elected officials and employees, political subdivision may contribute--contracting procedure.--1. The governing body of any political subdivision may utilize the revenues and other available funds of the subdivision, as a part of the compensation of the elected officials and employees of the subdivision, to contribute to the cost of a plan, including a plan underwritten by insurance, for furnishing all or part of hospitalization or medical expenses, life insurance or similar benefits for the subdivision's elected officials and employees.
>
> * * *

Section 321.190, RSMo Supp. 1990, authorizes an attendance fee to be paid to members of the board of directors of a fire protection district. Section 321.190, RSMo Supp. 1990, provides:

> 321.190. Attendance fees authorized--reimbursement for expenses--secretary and treasurer, additional compensation, how set, limitation.--Each member of the board may receive an attendance fee not to exceed one hundred dollars for attending each regularly called board meeting, or special meeting, but shall not be paid for attending more than two in any calendar month, except that in a county of the first class having a charter form of government, he shall not be paid for attending more than four in any calendar month. In addition, the chairman of the board of directors may receive fifty dollars for attending each regularly or specially called board meeting, but shall not be paid the additional fee for attending more than two meetings in any calendar month. Each member of the board shall be reimbursed for his actual expenditures in the performance of his duties on behalf of the district. The secretary and the treasurer, if members of the board of directors, may each receive

> such additional compensation for the performance of their respective duties as secretary and treasurer as the board shall deem reasonable and necessary, not to exceed one thousand dollars per year. The circuit court having jurisdiction over the district shall have power to remove directors or any of them for good cause shown upon a petition, notice and hearing.

Section 321.190, RSMo Supp. 1990, makes no reference to health insurance. The authority for providing health insurance is found in Section 67.150, RSMo Supp. 1990. Because Section 321.190, RSMo Supp. 1990, does not mention health insurance, it does not impose a limit on the amount of money that can be expended for health insurance benefits as authorized by Section 67.150, RSMo Supp. 1990. Therefore, we conclude that Section 321.190, RSMo Supp. 1990, does not limit the amount of money which a fire protection district, established and conducting business under Chapter 321, RSMo, can expend for health insurance benefits provided to directors of the fire protection district pursuant to Section 67.150, RSMo Supp. 1990.

Because of our answer to your first question, it is not necessary to address your second question.

CONCLUSION

It is the opinion of this office that Section 321.190, RSMo Supp. 1990, does not limit the amount of money which a fire protection district, established and conducting business under Chapter 321, RSMo, can expend for health insurance benefits provided to directors of the fire protection district pursuant to Section 67.150, RSMo Supp. 1990.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 33-89

DEBT:
LEASE PURCHASE AGREEMENTS:
LEASES:
NURSING HOME DISTRICTS:
NURSING HOMES:

1) A nursing home district is authorized under Section 198.300, RSMo, as amended by House Bill No. 450, 86th General Assembly, First Regular Session (1991), to lease a nursing home facility within the district from a private entity and to operate such facility, and 2) where the lease provides for a term of one year with ten successive options to renew for periods of one year and upon failure to renew at the end of any lease year is terminated, such lease does not violate the debt-limitation provisions of Article VI, Section 26 of the Constitution of Missouri and does not require approval of the voters.

October 11, 1991

OPINION NO. 179-91

The Honorable T. M. Macdonnell, M.D.
Representative, District 140
State Capitol Building, Room 134
Jefferson City, Missouri 65101

Dear Representative Macdonnell:

This opinion is in response to your questions asking:

> Is it legal for a nursing home district board to enter into a lease and to operate a nursing home facility within the district's boundaries from a private entity, the lease term being for one year, renewable for additional years at the election of the nursing home district's board?
>
> Is it necessary to have a majority approval of the voters in said nursing home district before the nursing home district board can enter into a lease purchase agreement with a for-profit corporation to erect a satellite sixty bed nursing home in the nursing home district where lease contained ten successive options to renew for one year under same conditions and could be terminated by the nursing home district

> board on failure to renew the lease at the end of any year?

We have been provided information explaining that a corporation proposes to construct and thereafter lease to the Webster County Nursing Home District a 60-bed skilled nursing facility. Under the terms of the lease, the District, as tenant, would operate the facility. We understand the lease is structured to provide for a lease term of one year with ten successive options to renew for periods of one year. We presume that the annual lease payment would not exceed the income and revenue provided for such year plus any unencumbered balances from previous years. Upon failure to renew the lease at the end of any lease year, the lease is terminated.

The Webster County Nursing Home District was created and functions pursuant to the provisions of Sections 198.200 to 198.360, RSMo. The powers of a nursing home district are detailed in Section 198.300, RSMo, as amended by House Bill No. 450, 86th General Assembly, First Regular Session (1991). Section 198.300, as amended by House Bill No. 450, provides in part:

> 198.300. Powers of nursing home district.--1. A nursing home district shall have and exercise the following governmental powers, and all other powers incidental, necessary, convenient or desirable to carry out and effectuate the express powers:
>
> * * *
>
> (2) To acquire or convey land or structures in fee simple, rights in land and easements upon, over or across land and leasehold interests in land and tangible and intangible personal property used or useful for the location, establishment, maintenance, development, expansion, extension or improvement of any nursing home. The acquisition may be by dedication, purchase, gift, agreement, lease, use or adverse possession or by condemnation. The conveyance may be by deed or lease;
>
> (3) To operate, maintain and manage the nursing home, and to make and enter

> into contracts for the use, operation or management of and to provide rules and regulations for the operation, management or use of the nursing home; [Emphasis added.]
>
> * * *

Based on the plain meaning of the language used, a nursing home district is authorized by statute to acquire a facility through a lease and is authorized to operate a facility.

The next issue for consideration is whether the proposed lease violates Article VI, Section 26 of the Constitution of Missouri. Article VI, Section 26(a) provides:

> Section 26(a). Limitation on indebtedness of local governments without popular vote.--No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this constitution.

Subsequent provisions of Article VI provide authorization for local governments to become indebted if the indebtedness is approved by the voters.

In Scroggs v. Kansas City, 499 S.W.2d 500 (Mo. 1973), the court determined that a city entering a thirty-year lease would act in violation of Article VI, Section 26(a) because the lease agreement created a present indebtedness and obligated the city to impose taxes in succeeding years to satisfy the debt.

In St. Charles City-County Library District v. St. Charles Library Building Corporation, 627 S.W.2d 64 (Mo. App. 1981), the court of appeals considered the applicability of the Scroggs case to the library district entering a one year lease with twenty-four successive options to renew for one year. If all twenty-four options were exercised, the district had the option of purchasing the building for $100. The failure to renew the lease at the end of any year resulted in the termination of the lease. The court determined the Scroggs case was distinguishable from these facts, stating: ". . . because the lease may be terminated by the failure of the

District to renew it at the end of any year, we hold that it does not violate the debt-limitation provisions of Article VI, Section 26 of the constitution." St. Charles City-County Library District v. St. Charles Library Building Corporation, supra, 627 S.W.2d at 68.

Based on the decision in St. Charles City-County Library District v. St. Charles Library Building Corporation, supra, we conclude a lease agreement such as the one described in your question would not create the indebtedness discussed in Article VI, Section 26(a) of the Constitution of Missouri and, therefore, would not require approval by the voters of the district.

CONCLUSION

It is the opinion of this office that 1) a nursing home district is authorized under Section 198.300, RSMo, as amended by House Bill No. 450, 86th General Assembly, First Regular Session (1991), to lease a nursing home facility within the district from a private entity and to operate such facility, and 2) where the lease provides for a term of one year with ten successive options to renew for periods of one year and upon failure to renew at the end of any lease year is terminated, such lease does not violate the debt-limitation provisions of Article VI, Section 26 of the Constitution of Missouri and does not require approval of the voters.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

MAINTENANCE:
METROPOLITAN ZOOLOGICAL PARK
AND MUSEUM DISTRICT:

In regard to an indoor swimming complex, the term "maintenance" as used in Section 184.352(9), RSMo Supp. 1990, includes janitorial personnel, security personnel used to safeguard the facility and equipment, swimming pool chemicals and repair equipment, electricity to run motors and pumps, and utility costs to dehumidify and heat the indoor swimming complex.

September 23, 1991

OPINION NO. 181-91

The Honorable Franc Flotron
Senator, District 7
State Capitol Building, Room 427
Jefferson City, Missouri 65101

Dear Senator Flotron:

This opinion is in response to your question asking:

Re: RSMo 184.352(9) "Recreation and amateur sports subdistrict"

Do the following expenditures constitute maintenance:

1. Janitorial and security manpower at indoor swimming complex?

2. Commodities such as swimming pool chemicals and repair equipment at indoor swimming complex?

3. Electricity to run motors and pumps at indoor swimming complex?

4. Utility costs to dehumidify and heat indoor swimming complex?

Section 184.352, RSMo Supp. 1990, provides in part:

> 184.352. Definitions.--The following terms whenever used or referred to in sections 184.350 to 184.384 shall unless a different intent clearly appears

> from the context be construed to have the following meaning:
>
> * * *
>
> (9) "Recreation and amateur sports subdistrict" shall consist of a political subdistrict which shall provide for and assist in the planning, development, financing, maintenance, improvement and construction of facilities and venues to be publicly owned and operated by political subdivisions, public school districts, universities and colleges, or not for profit corporations chartered to attract, promote and manage major national and international amateur sports events, competitions and programs for the use of the general public. Such subdistrict shall structure its procedures for procuring supplies, services and construction to achieve the result that a minimum of twenty percent in the aggregate of the total dollar value of annual procurements is made directly or indirectly from certified socially and economically disadvantaged small business concerns; [Emphasis added.]
>
> * * *

Section 184.353.5, RSMo Supp. 1990, provides for the board of directors of any metropolitan zoological park and museum district established pursuant to Sections 184.350 to 184.384, RSMo, to obtain authorization from the voters to establish a recreation and amateur sports subdistrict. If approved by the voters, the subdistrict is authorized "to establish a tax rate not in excess of four cents on each $100 of assessed valuation of taxable property within the district for a period not to exceed nine years."

While "maintenance" has been defined in other contexts, e.g., see, Sections 227.210 and 290.210(4), RSMo 1986, the legislature has provided no definition for the term as used in Section 184.352(9), RSMo Supp. 1990. Therefore, we must construe this word in the context of Sections 184.350 to 184.384, RSMo. The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning. Wolff Shoe

Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988).

In Attorney General Opinion Letter No. 28-90, a copy of which is enclosed, we interpreted the word "maintenance" in the context of Section 67.550.3, RSMo Supp. 1989, and determined it "includes expenditures for the purposes of upkeep and to keep the facilities and buildings in a state of good repair." Id. at 3. See also Attorney General Opinion No. 14-88, a copy of which is enclosed.

Webster's New World Dictionary, Second College Edition, 1980 defines the word "maintenance" as:

> a maintaining or being maintained; upkeep, support, . . . the work of keeping a building, machinery, etc. in a state of good repair. . . .

Id at 854. The same source defines "maintain" as:

> 1. to keep or keep up; continue in or with; carry on 2. a) to keep in existence or continuance . . . b) to keep in a certain condition or position, esp. of efficiency, good repair, etc.; preserve . . . .

Id.

Section 184.352(9), RSMo Supp. 1990, provides for "maintenance" of certain facilities. You have listed four types of activities and ask if these would constitute "maintenance" as the term is used in Section 184.352(9), RSMo Supp. 1990.

Your first question concerns janitorial and security manpower at an indoor swimming complex. We believe there is no question that janitorial personnel is an essential element of keeping a facility in a state of good repair. To the extent that security personnel is used to safeguard the facility and equipment, this would also be an element of maintenance.

Your second question addresses swimming pool chemicals and repair equipment. We assume the chemicals to which you refer are used in cleaning the pool and treating water in the pool. Such chemicals, like repair equipment, are necessary to keep the pool in good condition and, therefore, would constitute maintenance expenses.

You next ask about electricity to run motors and pumps at an indoor swimming complex. Again, we assume this is part of the operation of treating water in the pool by filtering and purifying the supply. Such would fall within the definition of maintenance.

Finally, you ask about utility costs to dehumidify and heat an indoor swimming complex. Such activities we conclude prevent deterioration of the facility that might be caused by excess humidity. This also would fall within the definition of "maintenance" as "to keep in a certain condition or position, esp. of efficiency, good repair, etc."

CONCLUSION

It is the opinion of this office that in regard to an indoor swimming complex, the term "maintenance" as used in Section 184.352(9), RSMo Supp. 1990, includes janitorial personnel, security personnel used to safeguard the facility and equipment, swimming pool chemicals and repair equipment, electricity to run motors and pumps, and utility costs to dehumidify and heat the indoor swimming complex.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 28-90
Opinion No. 14-88

ARCHITECTS AND ENGINEERS:
BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS, AND LAND SURVEYORS:
CITIES, TOWNS AND VILLAGES:
ENGINEERS:
PUBLIC WORKS:

A city Director of Public Works must be a licensed engineer if he engages in any of the activities listed in Section 327.181, RSMo 1986, which defines practice as a professional engineer, but state statutes do not require him to be a licensed engineer if he does not engage in any such activities.

October 9, 1991

OPINION NO. 190-91

The Honorable Norman Merrell
Senator, District 18
State Capitol Building, Room 423
Jefferson City, Missouri 65101

Dear Senator Merrell:

This opinion is in response to your question asking:

> May a city have a Director of Public Works who is not a professional engineer, if the city contracts with a professional engineer for the work which requires the services and expertise of a professional engineer?

We understand the city to which your question relates is a charter city. We have not reviewed any charter provisions that may be applicable, any qualifications the city may require of its Director of Public Works, or any job description applicable to the Director of Public Works. Our opinion is limited to addressing the applicable state statutes.

Section 327.181, RSMo 1986, defines the practice of a professional engineer:

> 327.181. Practice as professional engineer defined.--Any person practices in Missouri as a professional engineer who renders or offers to render or holds himself out as willing or able to render any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the

> mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering teaching of advanced engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications, any of which embraces such service or work either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects and including such architectural work as is incidental to the practice of engineering; or who uses the title "professional engineer" or "consulting engineer" or the word "engineer" alone or preceded by any word indicating or implying that such person is or holds himself out to be a professional engineer, or who shall use any word or words, letters, figures, degrees, titles or other description indicating or implying that such person is a professional engineer or is willing or able to practice engineering.

Section 327.191, RSMo 1986, prohibits a person from practicing as a professional engineer as defined in Section 327.181 unless such person is properly licensed. Section 327.191 provides:

> Section 327.191. Unauthorized practice prohibited, persons excepted.--No person shall practice as a professional engineer in Missouri, as defined in section 327.181 unless and until there is issued to him a certificate of registration or a certificate of authority certifying that he has been duly registered as a professional engineer or authorized to practice engineering in Missouri, and unless such certificate has been renewed as hereinafter specified; provided, however, that nothing in this chapter shall apply to the following persons:
>
> * * *

The provisions of Section 327.191 omitted above contain exceptions which are not applicable to your question.

Section 327.421, RSMo 1986, provides:

> 327.421. Political subdivisions not to use unregistered architects, professional engineers or land surveyors.--This state and its political subdivisions including counties, cities and towns, or legally constituted boards, agencies, districts, commissions and authorities of this state shall not engage in the construction of public works involving the practice of architecture, engineering or land surveying, unless the architectural and engineering drawings, specifications and estimates and the plats and surveys have been prepared by a currently registered architect, professional engineer or land surveyor, as the case may require.

Section 327.191 prohibits any person from practicing as a professional engineer unless such person is properly licensed. Section 327.181 defines the practice of a professional engineer. If the Director of Public Works engages in any of the activities listed in Section 327.181, then he must be a licensed engineer. If he does not engage in any of the activities listed in Section 327.181, state statutes do not require him to be a licensed engineer.

CONCLUSION

It is the opinion of this office that a city Director of Public Works must be a licensed engineer if he engages in any of the activities listed in Section 327.181, RSMo 1986, which defines practice as a professional engineer, but state statutes do not require him to be a licensed engineer if he does not engage in any such activities.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

September 26, 1991

OPINION LETTER NO. 192-91

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Section 3(b) of Article IX of the Missouri Constitution. A copy of the initiative petition and the proposed amendment which you submitted to this office on September 19, 1991, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure

AMBULANCE DISTRICTS:
FIRE PROTECTION DISTRICTS:
QUALIFICATION FOR OFFICE:

Section 321.017, RSMo, as enacted by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 262, 86th General Assembly, First Regular Session (1991), does not apply during the current terms of fire protection district and ambulance district board members in office on August 28, 1991.

November 26, 1991

OPINION NO. 194-91

The Honorable Jay Nixon
Senator, District 22
State Capitol Building, Room 429
Jefferson City, Missouri 65101

Dear Senator Nixon:

This opinion is in response to your question asking:

> Do the provisions of section 321.017, RSMo Supp. 1991 (section 11 of 1991 Truly Agreed To CCS/HCS/SCS/SB 262) require that members of fire protection district boards and ambulance district boards holding office on August 28, 1991, who are employed by a fire protection district or ambulance district, resign as of such date, or may such members serve the remainder of their terms? If required to resign, what is the effect of their continued service on such a board after August 28, 1991?

Along with your question, you have provided the following statement of facts:

> Members of various fire protection district boards and ambulance district boards holding office as of August 28, 1991, were employed by various fire protection districts and ambulance districts. The provisions of Section 321.017, RSMo Supp. 1991, provide that such employees may not serve as members of such boards. This section was enacted during the 1991 legislative session and became effective on August 28, 1991.

As originally enacted by House Committee Substitute for Senate Substitute for Senate Bill No. 628, 79th General Assembly, Second Regular Session (1978), Section 321.015, RSMo, prohibited members of a fire protection district board of directors "holding any lucrative office or employment under this state, or any political subdivision thereof. . . ." Section 321.015, RSMo 1978, created an exemption for "members of the organized militia, of the reserve corps, public school employees and notaries public."

Section 321.015, RSMo, as amended by Senate Committee Substitute for House Bill No. 924, 82nd General Assembly, Second Regular Session (1984), created an additional exemption for "fire protection districts located wholly within counties of the second, third or fourth class." House Bill No. 1149, 85th General Assembly, Second Regular Session (1990) created an additional exemption for fire protection districts "located within first class counties without a charter form of government having a population of more than one hundred ninety-eight thousand and not adjoining any other first class county."

Most recently, Section 321.015, RSMo, was amended by Senate Committee Substitute for House Bill No. 116, 86th General Assembly, First Regular Session (1991) (hereinafter sometimes referred to as "House Bill No. 116"), effective April 16, 1991. This section now reads as follows:

> 321.015. No person holding any lucrative office or employment under this state, or any political subdivision thereof as defined in section 70.120, RSMo, shall hold the office of fire protection district director under this chapter. When any fire protection district director accepts any office or employment under this state or any political subdivision thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary or expenses as fire protection district director. This section shall not apply to members of the organized militia, of the reserve corps, public school employees and notaries public, or to fire protection districts located wholly within counties of the second, third or fourth class or located within first class counties not adjoining any other first class county, nor shall this section apply to any county of the first or second class not having more than nine hundred thousand inhabitants which borders any three first

> class counties; nor shall this section apply to any first class county without a charter form of government which adjoins both a first class county with a charter form of government with at least nine hundred thousand inhabitants, and adjoins at least four other counties. The term "lucrative office or employment" does not include receiving retirement benefits, compensation for expenses, or a stipend or per diem, in an amount not to exceed seventy-five dollars for each day of service, for service rendered to a fire protection district, the state or any political subdivision thereof.

The "Ambulance District Law" appears at Sections 190.005 to 190.090, RSMo. The "Ambulance District Law" does not include a prohibition similar to that found in Section 321.015, RSMo.

Section 11 of Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 262, 86th General Assembly, First Regular Session (1991)(hereinafter sometimes referred to as "Senate Bill No. 262"), includes the following language [to be codified at Section 321.017, RSMo Supp. 1991]:

> Notwithstanding the provisions of section 321.015, RSMo, no employee of any fire protection district or ambulance district shall serve as a member of any fire district or ambulance district board while such person is employed by any fire district or ambulance district.

Section 321.017, RSMo, as enacted by Senate Bill No. 262, was effective August 28, 1991.

The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). In construing a statute, it is presumed the legislature was aware of the state of the law at the time of its enactment. Nicolai v. City of St. Louis, 762 S.W.2d 423, 426 (Mo. banc 1988). Section 321.015, RSMo, was amended early in the 1991 session of the General Assembly by House Bill No. 116. It is presumed that when the General Assembly later enacted Senate Bill No. 262 in the same session, it was aware of the earlier amendment.

Section 321.017, RSMo, as enacted by Senate Bill No. 262, creates a prohibition against fire protection district and ambulance district board members being employed by a fire protection district or an ambulance district. The word "notwithstanding" has been held to mean "in spite of" or "regardless of." Missouri Pacific Railroad Company v. Rental Storage & Transit Company, 524 S.W.2d 898, 908 (Mo. App. 1975). Therefore, the apparent intent of the legislature is that Section 321.017, RSMo, as enacted by Senate Bill No. 262, overrides the exceptions set out in Section 321.015, RSMo, as amended by House Bill No. 116.

In future terms of office, based on the language of Section 321.017, RSMo, as enacted by Senate Bill No. 262, there is no question that members of the board of directors of ambulance districts or fire protection districts may not serve as employees of those districts.

As for those individuals who were in office as directors of an ambulance district or fire protection district on August 28, 1991, no Missouri authorities address the question of whether Section 321.017, RSMo, as enacted by Senate Bill No. 262, is to be applied to them in their current terms. Authorities from other jurisdictions are helpful.

In Myers v. Hawkins, 362 So.2d 926 (Fla. 1978), a provision preventing state legislators from practicing law before the Florida Public Service Commission was held not to apply to legislators during their current term of office if they were in office prior to the effective date of the provision. Id., 362 So.2d at 935. The court opined:

> To apply newly-created professional limitations on a part-time Florida legislator in the midst of his term of office obviously defeats expectations honestly arrived at when the office was initially sought. The office itself is not abrogated or its duties altered, of course, but the privileges of officeholding are no less impaired by curtailing non-legislative employment opportunities than they would be if the office was made full-time and outside employment prohibited altogether. The abridgement in either case is tantamount to changing the qualifications of office."

Id., 362 So.2d at 935.

In People ex rel. Petka v. Bingle, 112 Ill.App.3d 73, 68 Ill. Dec. 297, 445 N.E.2d 941 (Ill. App. 1983), the court addressed a statute enacted by the Illinois legislature and signed into law by the Governor on September 17, 1981, prohibiting a person simultaneously holding the offices of county board member and township assessor. An individual elected to the county board on November 7, 1978, and elected township assessor on April 7, 1981, was not required to resign either position during the current terms. The court concluded nothing in the act indicated an intent to make its application retrospective. Id., 445 N.E.2d at 945-946.

Article I, Section 13 of the Constitution of Missouri provides that no law retrospective in its operation shall be enacted. Danaher v. Smith, 666 S.W.2d 452, 455 (Mo. App. 1984). As a general rule, statutes are presumed to operate prospectively "unless the legislative intent that they be given retroactive operation clearly appears from the express language of the act or by necessary or unavoidable implication." Lincoln Credit Co. v. Peach, 636 S.W.2d 31, 34 (Mo. banc 1982), appeal dismissed, 459 U.S. 1094, 103 S.Ct. 711, 74 L.Ed.2d 942 (1983). Nothing in Section 321.017, RSMo, as enacted by Senate Bill No. 262, indicates an intent that it be applied retroactively.

Based on the foregoing, we conclude that Section 321.017, RSMo, as enacted by Senate Bill No. 262, does not apply during the current terms of fire protection district and ambulance district board members in office on August 28, 1991. Because of our answer, we do not address your second question.

CONCLUSION

It is the opinion of this office that Section 321.017, RSMo, as enacted by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 262, 86th General Assembly, First Regular Session (1991), does not apply during the current terms of fire protection district and ambulance district board members in office on August 28, 1991.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

NATURAL RESOURCES, DEPARTMENT OF:
STATE PARKS:
TAXATION - SALES TAX:

The Department of Natural Resources is not authorized to spend monies generated by the Parks and Soils Sales Tax, Article IV, Section 47(a), of the Constitution of Missouri, or monies in the State Park Earnings Fund, Section 253.090, RSMo 1986, to make payments to counties and other political subdivisions in lieu of taxes on real property acquired by the Department.

October 28, 1991

OPINION NO. 195-91

G. Tracy Mehan, III, Director
Department of Natural Resources
Post Office Box 176
Jefferson City, Missouri 65102-0176

Dear Director Mehan:

This opinion is in response to your question asking:

> Whether monies generated by the Parks and Soils Sales Tax, Art. IV, Section 47(A), Constitution of Missouri, or the State Park Earnings Fund, Section 253.090, RSMo, may lawfully be expended to make payments in lieu of real property taxes to counties and other political subdivisions for formerly privately-owned lands that have been acquired by the state for state park purposes.

Along with your question, you provided the following statement of facts:

> The Department of Natural Resources is authorized by Section 253.040, RSMo, to acquire real property for state park purposes. Once acquired, such real property is exempt from local taxation by reason of Art. X, Section 6, Constitution of Missouri.

> Several interested parties, representing both local political subdivisions and the state parks, are interested in exploring the concept of a payment in lieu of taxes, to be paid out of either Parks and Soils Sales Tax revenues or the State Parks Earnings Fund, by the Department of Natural Resources to the local political subdivisions.
>
> Presently, the Department of Conservation makes such payments in lieu of taxes.

Section 253.040, RSMo 1986, authorizes the Department of Natural Resources to acquire land for park or parkway purposes. This section states:

> 253.040. Acquisition of land--eminent domain.--1. The department of natural resources is hereby authorized to accept or acquire by purchase, lease, donation, agreement or eminent domain, any lands, or rights in lands, sites, objects or facilities which in its opinion should be held, preserved, improved and maintained for park or parkway purposes. The department of natural resources is authorized to improve, maintain, operate and regulate any such lands, sites, objects or facilities when such action would promote the park program and the general welfare. The department of natural resources is further authorized to accept gifts, bequests or contributions of money or other real or personal property to be expended for any of the purposes of sections 253.010 to 253.100; except that any contributions of money to the department of natural resources shall be deposited with the state treasurer to the credit of the state park earnings fund and expended upon authorization of the department of natural resources for the purposes of sections 253.010 to 253.100 and for no other purposes.
>
> * * *

G. Tracy Mehan, III, Director

Property acquired by the Department of Natural Resources, as an executive department of state government, is state property. Article X, Section 6 of the Constitution of Missouri specifically exempts all real and personal property of the state from taxation. Therefore, the Department of Natural Resources is under no duty or obligation to make real property tax payments to counties or other political subdivisions.

The question is whether authority exists to allow the Department of Natural Resources to make payments in lieu of taxes to compensate local governments for revenues lost when real property is acquired by the Department.

Article IV, Section 47(a) of the Constitution of Missouri provides for a sales and use tax to be levied for state parks.

> Section 47(a). Sales and use tax levied for soil and water conservation and for state parks.--For the purpose of providing additional monies to be expended and used by the department of natural resources through the state soil and water districts commission as defined in Section 278.070, RSMo, 1986, for the saving of the soil and water of this state for the conservation of the productive power of Missouri agricultural land, and by the department of natural resources for the acquisition, development, maintenance and operation of state parks in accordance with Chapter 253, RSMo, 1986, and for the administration of the laws pertaining thereto, an additional sales tax of one-tenth of one percent is hereby levied and imposed upon all sellers for the privilege of selling tangible personal property or rendering taxable services at retail in this state upon the sales and services which now are or hereafter are listed and set forth in, and, except as to the amount of tax, subject to the provisions of and to be collected as provided in the "Sales Tax Law" and subject to the rules and regulations promulgated in connection therewith; and an additional use tax of one-tenth of one percent is levied and imposed for the privilege of storing, using or consuming within this state any article of tangible personal property as

> set forth and provided in the "Compensating Use Tax Law" and, except as to the amount of the tax, subject to the provisions of and to be collected as provided in the "Compensating Use Tax Law" and subject to the rules and regulations promulgated in connection therewith.

Section 253.090, RSMo 1986, establishes the state park earnings fund and specifies the use of this fund.

> 253.090. State park earnings fund created, how used.--1. All revenue derived from privileges, conveniences, contracts or otherwise, and all moneys received by gifts, bequests or contributions or from county or municipal sources shall be paid into the state treasury to the credit of the "State Park Earnings Fund", which is hereby created. In the event any state park or any part thereof is taken under the power of eminent domain by the federal government the moneys paid for the taking shall be deposited in the state park earnings fund. The fund shall be used solely for the payment of the expenditures of the department of natural resources in the administration of this law, except that in any fiscal year the department may expend a sum not to exceed fifty percent of the preceding fiscal year's deposits to the state park earnings fund for the purpose of:
>
> (1) Paying the principal and interest of revenue bonds issued;
>
> (2) Providing an interest and sinking fund;
>
> (3) Providing a reasonable reserve fund;
>
> (4) Providing a reasonable fund for depreciation; and
>
> (5) Paying for feasibility reports necessary for the issuing of revenue bonds.

> 2. A good and sufficient bond conditioned upon the faithful performance of the contract and compliance with this law shall be required of all contractors.
>
> 3. Any person who contracts under this section with the state shall keep true and accurate records of his receipts and disbursements arising out of the performance of the contract and shall permit the department of natural resources and the state auditor to audit same. [Emphasis added.]

These preceding provisions specifically limit the use of funds for the purposes provided therein. We find no authority for the use of funds for the purpose of making payments in lieu of taxes to local governments.

In your opinion request, you refer to the Conservation Commission making payments in lieu of taxes. In Attorney General Opinion No. 31, Noren, 1977, (now withdrawn), this office concluded that the Conservation Commission was not authorized to make payments from the Conservation Commission fund to county or other local collectors for taxes on real property located in the county and owned by the Conservation Commission. However, in 1980, Article IV, Section 43(b) of the Constitution of Missouri was amended and now expressly authorizes the Conservation Commission "to make payments to counties for the unimproved value of land for distribution to the appropriate political subdivisions as payment in lieu of real property taxes for privately owned land acquired by the commission. . . ." Because of this subsequent constitutional amendment, Opinion No. 31, Noren, 1977, was withdrawn by this office.

No provision similar to that authorizing payments in lieu of taxes by the Conservation Commission exists concerning funds of the Department of Natural Resources. Because of the absence of authority for the Department of Natural Resources to make payments in lieu of real property taxes, we conclude the Department is not authorized to make such payments.

G. Tracy Mehan, III, Director

CONCLUSION

It is the opinion of this office that the Department of Natural Resources is not authorized to spend monies generated by the Parks and Soils Sales Tax, Article IV, Section 47(a), of the Constitution of Missouri, or monies in the State Park Earnings Fund, Section 253.090, RSMo 1986, to make payments to counties and other political subdivisions in lieu of taxes on real property acquired by the Department.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
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WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
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October 9, 1991

OPINION LETTER NO. 198-91

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall Article IX, section 3(b) of the Constitution of Missouri be amended to change the minimum amount of annual state revenue required for the support of public elementary and secondary schools from one-fourth of total revenue -- exclusive of interest and sinking fund -- to one-third of total revenue -- exclusive of federal funds, gifts and bequests, net proceeds from bond sales, and revenues from certain dedicated taxes; and, further, to clarify that revenue for supporting the public elementary and secondary schools does not include appropriations made under court order for violations of the United States Constitution?

See our Opinion Letter No. 192-91.

We approve the legal content and form of the proposed statement. Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CONSIDERATION: A promotional plan where a
GAMBLING: manufacturer of merchandise
LOTTERIES: conducts a drawing of product registration cards for a prize when such cards may only be obtained by the purchase of merchandise is a lottery as the term is used in Article III, Section 39(9) of the Missouri Constitution and Section 572.010(7), RSMo 1986.

December 30, 1991

OPINION NO. 217-91

The Honorable Ken Jacob
Representative, District 25
State Capitol Building, Room 110B
Jefferson City, Missouri 65101

Dear Representative Jacob:

This opinion is in response to your question asking:

> Is there a lottery within the definition of section 572.010, RSMo 1986, where a manufacturer of merchandise conducts a drawing of product registration cards for a prize, where such cards are returned from the purchaser of merchandise, and where such cards were procured with the purchase of the merchandise?

You have provided the following description of a promotional plan:

> A manufacturer of merchandise wishes to conduct a drawing of product registration cards for a prize, such cards being returned from the purchasers of merchandise after being procured by such purchasers with the purchase of the merchandise.

Article III, Section 39(9) of the Missouri Constitution provides:

> Section 39. Limitation of power of general assembly. The general assembly shall not have power:
>
> * * *
>
> (9) Except as otherwise provided in section 39(b) or section 39(c) of this article, to authorize lotteries or gift enterprises for any purpose, and shall enact laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; except that, nothing in this section shall be so construed as to prevent or prohibit citizens of this state from participating in games or contests of skill or chance where no consideration is required to be given for the privilege or opportunity of participating or for receiving the award or prize and the term "lottery or gift enterprise" shall mean only those games or contests whereby money or something of value is exchanged directly for the ticket or chance to participate in the game or contest. The general assembly may, by law, provide standards and conditions to regulate or guarantee the awarding of prizes provided for in such games or contests under the provision of this subdivision;
>
> * * *

Section 572.010, RSMo 1986, defines "lottery."

> 572.010. Chapter definitions.--As used in this chapter:
>
> * * *
>
> (7) "Lottery" or "policy" means an unlawful gambling scheme in which for a consideration the participants are given an opportunity to win something of value, the award of which is determined by chance; [Emphasis added.]
>
> * * *

"In Missouri, the 'elements of a lottery are: (1) Consideration; (2) prize; (3) chance.'" Mobil Oil Corporation v. Danforth, 455 S.W.2d 505, 507 (Mo. banc 1970), quoting State ex inf. McKittrick v. Globe-Democrat Pub. Co., 341 Mo. 862, 110 S.W.2d 705, 713 (banc 1937). Therefore, it is necessary to examine the proposed promotional plan to see if it contains these three elements.

As the plan is described, purchasers of merchandise will receive a product registration card which makes them eligible for a drawing for a prize. A purchase of merchandise is required for a person to participate in the drawing.

The facts demonstrate the existence of the element of chance since purchasers of merchandise become participants in a random drawing. The element of prize is also present since the winner of the drawing will receive a prize.

This leaves the question of whether the element of consideration is present. Purchasers of merchandise receive a product registration card making them eligible for the chance to win a prize in a drawing.

In Attorney General Opinion No. 10, Boone, March 1, 1955, a copy of which is enclosed, we opined on a scheme operated by a service station. Purchasers of gasoline received a ticket. Each week a drawing was held and the winner received free an equal of the amount of his gasoline purchase. We found the element of consideration in these facts.

> The "consideration" is the participation requirement that one must purchase gasoline from the person(s) conducting the scheme. It matters not that the price of the gasoline is no greater than it was prior to the institution of the scheme. The consideration in this scheme is similar to the consideration involved in the case of State vs. Mumford, 73 Mo. 647, 39 Am. Rep. 532. There, the subscriber to a newspaper received both the newspaper and a ticket which might draw a prize, for the regular subscription price of the newspaper.

Id. at 3. In State v. Mumford, 73 Mo. 647, 39 Am. Rep. 532 (1881), the Court stated:

> . . . The fact that the subscription price of the Times was not increased, does not

> alter the character of the scheme, inasmuch as the price paid entitled the subscriber to a ticket in the lottery as well as to a copy of the paper. . . .

Id. at 651. See also State v. McEwan, 343 Mo. 213, 120 S.W.2d 1098, 1101 (banc 1938)(test is whether persons paying for admission to theatre were paying in part for the chance of a prize); and Attorney General Opinion No. 63, Moore, November 19, 1954, a copy of which is enclosed (a promotional scheme wherein the promoter offers to give a cash prize to a portion of the purchasers of his product constitutes a lottery). In order to be eligible for the chance to win a prize in the promotional plan which you describe, a purchase of merchandise is required. Therefore, the element of consideration is present and such promotional plan is a lottery.

CONCLUSION

It is the opinion of this office that a promotional plan where a manufacturer of merchandise conducts a drawing of product registration cards for a prize when such cards may only be obtained by the purchase of merchandise is a lottery as the term is used in Article III, Section 39(9) of the Missouri Constitution and Section 572.010(7), RSMo 1986.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 63, Moore, November 19, 1954
Opinion No. 10, Boone, March 1, 1955

ANNEXATION:
ANNEXATION ELECTIONS:
ANNEXATION SCHOOL DISTRICT ELECTION:
ELECTIONS:
PROPERTY TAX:
SCHOOLS:
SCHOOL DISTRICT ANNEXATION:
SCHOOL ELECTIONS:

A six-director school district can submit to its voters at the same election the question of annexation as provided in Section 162.441, RSMo 1986, and the question of a tax rate increase pursuant to Sections 164.021 and 164.031, RSMo 1986.

December 31, 1991

OPINION NO. 220-91

The Honorable Dale Whiteside
Representative, District 11
State Capitol Building, Room 102B-A
Jefferson City, Missouri 65101

Dear Representative Whiteside:

This opinion is in response to your question asking:

> Can a school district vote on an annexation to another district and on a tax levy increase at the same election?

From the material accompanying your opinion request, we understand that a school district wishes to vote on annexation to another district. In the event the vote on annexation fails, the district desires a tax levy increase. To save time and the expense of two elections, the district wants to place both questions on the ballot in the same election. We presume that the school district wishing to vote on annexation and the school district to which annexation is proposed are both six-director school districts.

Section 162.441, RSMo 1986, provides for the question of annexation to be submitted to the voters.

> 162.441. Annexation--procedure--form of ballot.--1. If any school district which adjoins a six-director district, including urban districts, desires to be attached thereto for school purposes, upon the receipt of a petition setting forth such fact, signed either by voters of the district equal in number to ten percent of those voting in the last school election at

which school board members were elected or by a majority of the voters of the district, whichever is the lesser, the school board of the district desiring to be so attached shall submit the question to the voters; except that in districts wholly, or partially, within cities having three hundred thousand to seven hundred thousand inhabitants, the petition seeking attachment to an adjoining district, or to any high school district in the county as hereinafter in this section provided, for school purposes shall be signed by at least ten percent of the voters of the districts.

2. The question shall be submitted in substantially the following form:

> Shall the . . . . . school district be annexed to the . . . . . school district?

3. If a majority of the votes cast favor annexation, the secretary shall certify the fact, with a copy of the record, to the board of the district and to the board of the district to which annexation is proposed; whereupon the board of the six-director district to which annexation is proposed shall meet to consider the advisability of receiving the district and if a majority of all the members of the board favor annexation, the boundary lines of the six-director school district from that date shall be changed to include the district, and the board shall immediately notify the secretary of the district which has been annexed of its action.

4. Upon annexation, all property and money on hand belonging thereto shall immediately pass into the possession of the board of the six-director school district.

5. If a majority of the votes cast are against annexation, the question shall not be submitted within two years after the previous submission.

> 6. Any school district may annex to any high school district in the county in the manner provided by this section if, prior to the time the question is submitted to the voters of the district, the annexation is approved in writing by the state board of education.

Sections 164.021 and 164.031, RSMo 1986, explain the procedure for submitting to the voters the question of whether the rate of taxation shall be increased.

> 164.021. Excess levy, procedure.--1. Whenever it becomes necessary, in the judgment of the school board of any school district in the state, to increase the tax rate beyond the rate authorized by the constitution for district purposes without voter approval plus the last tax rate approved by the voters for school purposes, or when voters of the district equal in number to ten percent or more of the number of votes cast for the member of the school board receiving the greatest number of votes cast at the last school election in the district wherein board members were elected, petition the board, in writing, for an increase in the tax rate, the board shall determine the rate of taxation necessary to be levied in excess of the existing rate and submit the proposition as to whether the rate of taxation shall be increased by the board to the voters of the district. The proposal may be submitted at an election.
>
> 2. If the necessary majority of the voters voting thereon, as required by article X, section 11(c), of the constitution, favor the proposed increase, the result of vote, including the rate of taxation so voted, shall be certified by the clerk of the district to the clerk of the commission of the proper county or counties, who, on receipt thereof, shall assess the amount so certified, effective as of September twentieth next following, against all taxable property of the school district as provided by law. In metropolitan districts the certification

> shall be made by the secretary of the board as required by law.
>
> 164.031. Form of ballot.--The question shall be submitted in substantially the following form:
>
> > Shall the school board of . . . . . (name of district) be authorized to increase the tax levy for . . . . . (list purpose or purposes) by . . . . . (amount of increase) on one hundred dollars assessed valuation? If this proposition is approved by the voters, the total operating levy of the school district will be . . . . . (amount) per one hundred dollars of assessed valuation.

We find no authority which would expressly prohibit submission of the two questions in the same election. In Attorney General Opinion No. 39, Henry, April 12, 1951, a copy of which is enclosed, this office concluded that a school district could not vote to be annexed to either one or the other of two consolidated school districts at the same election. However, in the situation presented in that opinion, submitting such an alternative choice required deviation from the ballot form provided by statute as well as possibly resulting in no choice receiving a majority if, for example, 68 votes were cast of which 22 voted for annexation to one school district, 26 voted for annexation to the other school district, and 20 voted against annexation. Id. at 3. The situation presented in that opinion differs significantly from the situation about which you are concerned.

In the situation about which you are concerned, the two questions to be submitted to the voters do not present an alternate choice. Approval of annexation by the voters would not immediately complete the annexation process. Section 162.441.3, RSMo 1986, provides that if a majority of votes cast favor annexation, the board of the district "to which annexation is proposed shall meet to consider the advisability of receiving the district . . . ." The boundary lines of the receiving district would be changed to include the district to be annexed only after a vote in favor of annexation is cast by a majority of all members of the receiving district board.

> Although the section does not specify the length of time within which the board in the annexing district must act the law

> would supply the deficiency and require the board of directors to meet within a reasonable length of time to consider the advisability of accepting the released territory, so that no extended hiatus would occur in any event between the action of one board and the action of the other. In the meantime the original district in which the vote took place would be obligated to continue to maintain the schools, so that the provision of educational facilities would not be interrupted. [Emphasis added.]

State at inf. Taylor ex rel. Schwerdt v. Reorganized School District R-3, Warren County, 257 S.W.2d 262, 266 (St. L. App. 1953). In Attorney General Opinion No. 157, Lance, 1965, a copy of which is enclosed, this office concluded that nine months was not, as a matter of law, an unreasonable length of time for a receiving school district to act on the annexation. The original school district is responsible for continuing to maintain the schools until the annexation is complete. Therefore, even if the annexation is approved by the voters, the tax levy increase may be necessary to maintain the schools until the annexation is complete.

In summary, there is no express prohibition on submitting the annexation question and the tax levy increase question at the same election. The two questions are not impermissible alternatives such as discussed in Attorney General Opinion No. 39, Henry, April 12, 1951.

CONCLUSION

It is the opinion of this office that a six-director school district can submit to its voters at the same election the question of annexation as provided in Section 162.441, RSMo 1986, and the question of a tax rate increase pursuant to Sections 164.021 and 164.031, RSMo 1986.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 157, Lance, 1965
Opinion No. 39, Henry, April 12, 1951